DOCUMENT RESUME

ED 165 869 PS 009 936

AUTHOR	Emlen, Arthur; And Others
TITLE	Overcoming Barriers to Planning for Children in Foster Care.
INSTITUTION	Portland State Univ., Oreg. Regional Research Inst. for Human Services.
SPONS AGENCY	Administration for Children, Youth, and Families (DHEW), Washington, D.C.; National Center for Child Advocacy (DHEW/OHD), Washington, D.C.
REPORT NO	DHEW-OHDS-78-30138
PUB DATE	[78]
GRANT	CB-OCD-481
NOTE	132p.; For related documents, see PS010236-37 and PS010371; Parts may be marginally legible due to small print
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock No. 017-090-0034-8, $3.00)
EDRS PRICE	MF-$0.83 HC-$7.35 Plus Postage.
DESCRIPTORS	*Adoption; Case Studies; Child Advocacy; *Children; Costs; *Demonstration Projects; Foster Family; *Foster Homes; *Placement; Program Development
IDENTIFIERS	Oregon; *Placement Stability

ABSTRACT

This report describes how barriers to planning for children inappropriately placed in foster care were overcome in a 3-year demonstration project: Freeing Children for Permanent Placement, conducted by the Children's Services Division, Department of Social Services, State of Oregon. Clients, amount of effort made, personnel involved, social work and legal components, process, cost savings, and the problems and successes encountered are described. Chapter 1 introduces the Oregon project. Chapter 2 discusses the need for permanency planning. Chapter 3 describes the children and their parents who were served by the project. Chapter 4 describes direct services, administrative resources, the institutional framework and the technology of permanent planning. Chapter 5 gives a case history of one family in order to show the way the project worked to achieve permanency planning goals. Chapter 6 describes the prerequisites to mounting a child advocacy effort on a scale broader than simple trial proceedings. Chapter 7 details the project's expenses and compares them to an estimate of what would have been spent had the children served remained in foster care. Chapter 8 highlights some of the events that shaped the development, acceptance and implementation of permanency planning in Oregon. (Author/RH)

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OVERCOMING BARRIERS TO PLANNING FOR CHILDREN IN FOSTER CARE

by

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Administration for Children, Youth and Families
Children's Bureau
National Center for Child Advocacy

DHEW Publication No. (OHDS) 78-30138

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

PS 009936

A report on "Freeing Children for Permanent Placement," a demonstration project of the State of Oregon, Children's Services Division. Supported by the Children's Bureau, Office of Child Development, U.S. Department of Health, Education, and Welfare (Grant CB-OCD No. 481).

FOREWORD

"Overcoming Barriers to Planning for Children in Foster Care," is an evaluation report of a three year demonstration project, "Freeing Children for Permanent Placement," an effort designed to reduce the number of children in unplanned foster care. The project was supported by the U.S. Children's Bureau of the Administration for Children, Youth and Families, Department of Health, Education, and Welfare and conducted by the Children's Services Division, Department of Social Services, State of Oregon. The evaluation was conducted by the Regional Research Institute for Human Services, Portland State University.

This report describes how the project overcame the barriers to planning for these children. It describes the clients, amount of effort made, personnel involved, social work and legal components, process, cost savings, and the problems and successes encountered.

The National Center for Child Advocacy of the U.S. Children's Bureau is pleased to make this information available to assist others to overcome the barriers to planning for children in long term, unplanned foster care. Many States are already benefiting from an adaptation of the permanent planning strategies described through a follow-up contract from the National Center for Child Advocacy with the Regional Research Institute for Human Services, designed to assist States in the utilization of the permanent planning strategies developed in the "Oregon Project." Technical assistance has been made available to fifteen States in the first phase of this contract and an additional ten States have been added in Phase II. In a separate but tandem effort, eleven grants were awarded to States in 1976 for demonstration projects designed to replicate or adapt key aspects of the Oregon Project to decrease the number of children who are inappropriately within the foster care system.

We sincerely hope that through continued efforts even more States and local counties will be able to implement these procedures which reduce the unnecessary separation of children from their families and minimize lengthy and inappropriate placement of children in temporary, substitute care arrangements.

Helen V. Howerton

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PREFACE

This is Volume II of a three-volume evaluation of "Freeing Children for Permanent Placement" (CB-OCD #481), a demonstration project of the Children's Services Division of the Oregon State Department of Human Resources. This three-year demonstration and research project was supported by the United States Children's Bureau, Office of Child Development, Department of Health, Education, and Welfare. It extended from November 1, 1973 to October 31, 1976.*

Volume I, Barriers to Planning for Children in Foster Care, examined the basis on which caseworkers made an initial planning decision for children in their foster care caseloads. Client barriers, as well as attitudinal and institutional barriers to permanent plans, were analyzed. The caseload screening, which was the focus of that study, also provided the sample for the demonstration by identifying those children in foster care who were thought not likely to return home.

The present volume describes how the project overcame the barriers to planning for these children. Here we attempt to present for the general audience an overview of what has come to be called, "The Oregon Project". We describe the problem, the clients, the amount of effort made, and by whom, the social work and legal components, the process, the cost savings, and the problems and successes encountered in implementing the results in a state agency.

There are so many persons to thank -- first of all, my staff and co-authors. Janet Lahti wrote the chapter on process in one county. She also was all-round research assistant and coordinator. Currently she is project director of the follow-up study. Glen Downs, J.D.,

*Now in its fourth year (1977), the project is conducting a follow-up study of the children placed back home, adopted, or remaining in foster care.

lawyer and research associate at the Institute, wrote Chapter 6 on the contributions to the project made by David Slader, J.D., and the Metropolitan Public Defender's Office. Alec McKay, cost analyst of Petroglyphs, Inc., conducted the cost analysis of project savings and wrote Chapter 7.

Susan Downs was our copy editor and rewrite artist. Sometimes we were like the fellow in "[illegible]lum Song" who went to the door and said, "Lady, I have me a button here. Will you sew a coat on it?"

Other RRI contributors were James Casciato, computer programmer; Deane Clarkson, statistician; Katie Liedtke, research assistant; and Marilyn Sullivan, librarian.

Project staff from Children's Services Division: Victor Pike was project director and is described enough in the text to ignore him here. He made it happen and he is now heading up our Children's Bureau, National Center for Child Advocacy project, "Dissemination and Utilization of Permanent Planning Strategies for Children in Long-Term Foster Care" (contract HEW 105-77-1000).

Our appreciation also to project staff Ann Sindelar and Jan Reed, and to the project social workers: Med Landis, Denise Case, Dave White, Lance King, Garlene Goodrich, Betty Dean, Lynn Frohnmayer, Judy Zupan, Dan Herman, Joy McGavock, Jan Knowles, Marilyn Chase, and Mary Ann Winn.

Lois McCarthy, of CSD, is also described in the text. She gave the project crucial guidance at the state level. Also helpful at CSD were Cecil Hinsey, Barbara Spencer, Monte McLaren, George Boyle, James Burri, Jim McAllister, Ray Smith, Jackie Winters, and three CSD Administrators -- Don Miller, Fred Segrest, and Nick Peet.

We are particularly indebted to Cecilia Sudia, Children's Bureau Project Officer, who shepherded the development of this study from the very beginning, contributing significantly to the research, the demonstration, and its implementation. Our appreciation also to the other Children's Bureau researchers and staff who helped and who saw that the project results merited national dissemination: Helen Howerton, Frank Ferro Charles Gershenson, Ursula Gallagher, and Bea Garrett; Regional Children's Bureau consultants Mark Emanuel and John Downey; and site visitors: Kermit Wiltse, Saad Nagi, and David Fanshel.

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CHAPTER 1

INTRODUCTION TO THE OREGON PROJECT

Supported by research and demonstration monies from the United States Children's Bureau, Office of Child Development (Grant #CB-OCD #481), the State of Oregon has pioneered in a specialized area of foster care planning designed to reduce the number of children placed inappropriately in foster care. Called "Freeing Children for Permanent Placement," the project addressed the backlog of children whose status in foster care was indeterminate, drifting, and vague, focusing sharply on the goal of achieving an alternative to foster care that had greater prospects for permanence.

In a two-year period starting November 1, 1973, in 17 of Oregon's 36 counties, 509 children were accepted by the project and assigned to one of 15 project caseworkers after a systematic screening of caseloads to identify children not likely to return home. A third year was devoted to completing cases in court or on appeal and to implementing the demonstration in the regular system of services.

The screening criteria for project cases required that the child had been in foster care more than one year, was unlikely to return home, and was adoptable. Two thousand two hundred eighty-three cases were screened. The screening was described and evaluated in Barriers to Planning for Children in Foster Care. How did project children differ from the population of all children in foster care? The results of the screening did show differences, which are described in Chapter 3, "Characteristics of Project Cases."

Where termination of parent/child relationships was indicated, it was obtained in two ways. Some parents chose to move affirmatively by voluntarily relinquishing their parental rights to the agency for the purpose of adoptive placement of their children. Other cases required preparation for a court hearing to terminate parental rights by judicial decision.

If parents refused to release voluntarily, the case was referred to an attorney with the Metropolitan Public Defender's office in Portland, which, as part of the project, was under contract with Children's Services

Division to represent the child. If, after independent evaluation, the attorney felt that termination of parental rights was in the client's best interest, he initiated a proceeding to bring the case before the court. Numerous appeals of circuit court decisions have resulted in a body of case law which tested Oregon's statute and gave direction to future cases. Through the contract with the Metropolitan Public Defender, the project also provided assistance to caseworkers in preparation for court hearings and funds for psychiatric or psychological evaluation and expert testimony in court. This legal representation is described in Chapter 6.

Statutory authority for the project rested, of course, in Oregon law. To implement the statute, the project developed a typology to guide caseworkers in assessing whether the grounds existed for pursuing termination of parental rights. The situations of parents of project children were assessed as falling into one of the following categories: abandonment, desertion, condition, or conduct.

> Abandonment describes those cases in which parents, through statement or gesture, evidence a determination never to resume care of their children. An example would be the mother who leaves the child on a church doorstep with a note indicating her desire that the child be placed for adoption.
>
> Desertion covers those parents who have been absent or have had only incidental contact with their children for a specified period (one year in Oregon statutes), whatever their ultimate intentions about resuming custody.
>
> Condition includes those cases in which parents have a professionally diagnosed incapacity which is unlikely to change and which precludes their fulfilling the parental role, such as mental illness or mental deficiency.
>
> Conduct cases are those in which parents either cannot or refuse to respond adequately as parents, although they do not have a clinically diagnosable condition.

The Oregon statute and methods developed by the project directed how each kind of case would be structured to achieve termination of parental rights and subsequent adoption.

> If a parent who has abandoned his child cannot be located after searching diligently for six months, a termination of parental rights petition is prepared.
>
> If a parent has deserted his child for one year and cannot be found, despite a search, a termination petition is prepared. Even if the parent is found, a petition alleging desertion would

still be appropriate if it appeared that placement with the parent would be detrimental to the child.

If a parent suffers from a chronic, debilitating condition, a psychiatric or psychological examination is arranged. If the evaluator's professional opinion is that the condition is seriously detrimental to the child and is not remediable, a termination case is brought to court.

If a parent with no clinically diagnosable condition has failed nonetheless to perform minimally, as based on review by the caseworker, supervisor, and concerned community/agency representatives, the caseworker structures a goal-oriented, time-limited plan in which all appropriate community resources are engaged in a comprehensive effort to motivate and rehabilitate the family. Failing to accomplish rehabilitation, a termination of parental rights petition is prepared.

Even though project children were originally identified as those not likely to return home, the project's approach, as one might expect, resulted in returning approximately 1/4 of the children home to their biological parents. There are several reasons for this. For example, some abandoning and deserting parents were located, an assessment made, and if potential for adequate parenting could be developed, the child was returned home. It also happened that a previous diagnosis of irremediable condition was found to be in error, and parents could respond to proper evaluation and treatment. Some parents, when directed to appropriate resources, and supported and assisted by the caseworker, developed renewed motivation for parenting and were able to regain their children. It was sometimes questionable whether the parents met standards for a minimum sufficient level of functioning as parents, but the children were returned anyway, because evidence was lacking to terminate their rights in court. Project staff found the decision to return children to marginally adequate parents less difficult, however, when the children had formed no strong ties to substitute parents during their years in foster care. The project operated under a heavy sense of responsibility to exhaust all reasonable opportunities to return a child to his biological parents.

If neither return nor adoption was possible, the project referred cases back to local staff with a recommendation, when appropriate, for formalized long-term foster care agreements. For some children whose parents were not able to offer suitable care, permanent plans were arranged with relatives. This option was not frequently used, however, since a child probably would not have been in foster care had suitable relatives been available. These children were more likely to have formed attachments to their foster parents over the years, making the emotional attachment already in existence a more likely basis for a permanent plan.

The process by which permanent placements were pursued is described in Chapter 5. The case history presented in that chapter illustrates some of the difficult planning decisions the project had to make.

Process and outcome are closely related, and it will be helpful at the outset of this volume to have the results in mind. By October 31, 1976, three years after the project officially began, permanent placements had been implemented for 72 percent of the 509 children accepted by the project:

Plan for permanent placement implemented	367	72 percent
Implementation of plan in progress	92	18 percent
Plan not successful	50	10 percent
	509	100 percent

These are conservative figures. Further planning was undertaken for those classified as "plan not successful" at the end of the project, and cases still in progress mostly were those moving toward adoption. Ultimately, the percentages should come close to those shown in the right hand column of Table 1.1, with the best estimate being: 27 percent returned home and 52 percent freed for adoption -- 31 percent by foster parents and 21 percent by new parents.

A follow-up on the placements, to determine their stability and success, is in process during the fourth year of the project. An interim report of the follow-up study on February 1, 1977, shows that 96 percent of the children placed were still in a placement intended to be permanent. Since 37 additional permanent placements had occurred by February 1, 1977, the percentage of permanent placements implemented had risen to 76 percent of the 509 project children.

Other evidences of change that may be related to the Oregon project are attitude changes among caseworkers measured at the beginning of the project and 18 months later, and changes in the absolute number of children in foster care. In the state as a whole, the number of children in foster homes has been reduced to approximately 3600 from 4400 in 1972. From June of 1972 to June of 1976, the average daily population of children in foster homes was reduced by 31 percent in project counties and 4 percent in non-project counties.

A word of caution, though, needs to be given in evaluating these results. Project counties were not randomly selected, and the results must be attributable to many factors in addition to the efforts of project workers. Notice that the absolute reduction in the state's foster care population was twice the number permanently placed by the project. Remember also that project cases were not randomly selected. The project's success should be interpreted

TABLE 1.1

Project Results by Permanent Plan

Plan	Status as of October 31, 1976: Plan Implemented	Plan in Progress	Plan not Successful	Total	
Back to parent	131	5		136	27%
Adoption	184	83		267	52
by foster parents	96	63		159	31
by new parents	88	20		108	21
Contractual foster care	37	3		40	8
Relatives	15	1		16	3
Other	--	--	50	50	10
	367	92	50	509	100%
	(72%)	(18%)	(10%)		

in part as success in selecting the most likely candidates for permanent planning. Yet it is not the purpose of this volume to assess the results of the demonstration. That will be done in Volume III based on a county-by-county analysis of how the results related to project activity. The purpose of the present volume is to describe the project and the effort that went into it.

From a cost perspective, however, the results are not insignificant. When project children were returned home or were adopted, more than 4,000 months of foster care were saved during the period of the project alone. This resulted in a savings of more than a million dollars in foster care payments. The cost analysis is presented in Chapter 7.

While assessment of the project results is reserved for Volume III, we do try in the present volume to sensitize the reader to factors that may account for the results. This is done in Chapter 4, in which the key elements of the method are described. They are the elements which probably contributed most to the success of the project in Oregon, and they may well be essential to any state foster care program that is determined to move its clients into permanent placements. What are these essential elements?

- A sound state statute on termination of parental rights.
- A body of case law based on appellate decisions.
- Screening procedures to identify cases that are likely candidates for permanent planning options.
- The existence of pathways for exit from foster care, that is, real permanent planning options that have a basis in statute, administrative rule, agency policy and established practice.
- A goal-oriented philosophy of foster care practice and the motivation to go with it in a prevailing climate of attitude favorable to permanent placement.
- Staff resources, including manageable caseloads and resources for search procedures, clinical evaluation, and expert testimony in court.
- Training in specific skills for documenting evidence and taking cases to court.
- Expert supervision, consultation, and leadership for the support and reinforcement of the caseworkers.
- Legal representation of the child and the active involvement of lawyers, district attorneys, and judges.

A demonstration project is one thing. It is another to implement a system statewide. During the third year of the project the Oregon Children's Services Division moved vigorously to incorporate the permanent planning process. It requested and received from the legislature authorization to hire a permanent planning coordinator and related staff to operate what would now be an on-going state function. The legislature indicated that it was persuaded by the tangible results from the project. This and other efforts to implement the demonstration are described in the final chapter, 8.

One has to recognize that foster care has been a difficult program to manage. There are more than 350,000 children in foster care in the United States. It is likely that they have been there for several years on the average, and that most of them will not return to their parents. Indeed, it has been almost 20 years since Maas and Engler (1959) dramatized the drift of children in foster care despite its purpose as a temporary expedient. Any progress that can be made in overcoming the barriers to planning for these children merits description. It is our hope that the strategies developed in the Oregon project may be of some use to other states. This volume describes the people and problems addressed, the methods used, the process followed, and the results accomplished. For a review of the background literature and a study of the barriers to planning for children in foster care, we refer you to Volume I, and for the county-by-county analysis of project results, we refer you to Volume III.

CHAPTER 2

THE NEED FOR PERMANENCY PLANNING

The purpose of the project we are describing was to achieve family permanency for children as an alternative to prolonged foster care. "Permanent placement", "permanent planning" -- these are short-hand terms used by the project. What do they mean? What are the assumptions on which the project was based? Is there any such thing as permanence? Is that a reasonable goal? "How can anything be permanent?", critics ask. "Drift" and "limbo" -- are they not epithets which unfairly disparage a needed service?

The need for permanency planning has been recognized in the literature. Maas and Engler (1959) and the Child Welfare League of America aroused the profession to the problem of foster care drift twenty years ago. Since then a number of studies have added to its recognition (Weirstein, 1960; Jenkins, 1967, 1972, 1975; Bryce and Ehlert, 1971; Fanshel, 1971; Goldstein, Freud, and Solnit, 1974; and Wiltse, 1974). Some of these studies revealed the probable adverse effects of drift. In one small but pointed study by Thomas (1967), uncertainty and confusion about permanence were found associated with unresolved loss, grief, and difficulty in forming new relationships. Goldstein, Freud, and Solnit explored the psychological parenthood that developed with unintended parents (1974). Recognition of the problem of drift, however, failed to produce the needed results, and attention turned to efforts to change the foster care system. Mech (1970) pointed to needed decisions, Fanshel discussed information as a tool in decision-making (1976) and showed how parental visits are associated with returning children home (1975); Stein, Gambrill, and Wiltse developed contractual methods for working toward permanency goals (1974) and demonstrated their success (1977). Subsidized adoption received attention (Hargrave, Shireman and Connor, 1975; Washington State Department of Social and Health Services, 1975). See Barriers for additional discussion of the literature.

The Oregon demonstration was a comprehensive effort to identify and overcome the barriers to permanent planning. In attempting to fill a gap in the technology of permanency planning, the present volume and associated handbooks by no means resolve all of the issues involved. However, they do try to address some of the very real problems that exist in the management of foster care as a child welfare service. Let us try now to analyze what we mean by permanence and why it is needed.

What is this quality of permanence that so often is missing from foster care?

(1) First of all, "permanent" describes intent. A permanent home is not one that is certain to last forever, but one that is intended to last indefinitely. Yet a child who is drifting into prolonged foster care finds that though the placement stretches on, it was not so intended. The purpose is obscure, and the future remains clouded. The situation evokes doubt, uncertainty, and hesitancy. Permanent planning means clarifying the intent of placement, and, during temporary care, keeping alive a plan for permanency. This is difficult to do when a young child remains in foster care several years.

(2) Secondly, permanence means commitment and continuity in the child's relationships. Foster care typically involves two or more placements; of the Oregon children in this project, 33 percent had had one placement and 37 percent had had 3 or more. Disruption of a foster care placement entails discontinuity in those relationships that sustain a child's nurture and learning. A permanent family will survive geographic moves and the vicissitudes of life because belonging to a permanent family involves commitment. Whether the child is with his original parents or with adoptive parents, a permanent family means assuming that one shares a common future. The child's fate is intertwined with people who have an extra stake in the child for their own sense of posterity. It is no derogation of the love and commitment of foster parents to say that their role, the expectations of the agency, and legal authority do not permit the kind of commitment and continuity of which permanence is made.

(3) A permanent family also is one in which the sense of belonging is rooted in cultural norms and has definitive legal status. In American society, the customary way in which children's rights, welfare, and interests are protected is by those adults the law holds to be their parents, either biological or adoptive. Parental rights ensure continuity of the child's primary nurturing relationships, and parental rights protect parental authority to raise the child.

When those parental rights are called into question on grounds of sufficient gravity to remove the child and not return him, then how shall the qualities of permanence be achieved? Voluntary relinquishment and termination of parental rights are conceived as ways of permitting a substitute form of permanent placement when the evidence warrants.

(4) Finally, permanence means a respected social status. Temporary placements can avoid stigma because they have an acceptable temporary purpose. Prolonged placement, however, reveals the second-class status that foster care has. See Box 2.1. Disproportionately a service for lower socio-economic strata, foster care seldom is supported at levels that permit a child to present himself normally. In daily episodes of social life, a foster child fails to participate in cultural experiences enjoyed by others because his foster family cannot afford it.

Box 2.1 Here

The need for permanency planning is illustrated by the following case, in which a boy was returned to his mother after seven years in foster care. Identified in caseload screening as not likely to return home, and as a likely candidate for adoption, the child entered the project. A "due process" effort to assess his attachment to his mother and his mother's motivation and capability to care for him resulted in his restoration to his mother. The case illustrates two things:

- how a temporary need for foster care can drift into long-term, placement (in retrospect, it is questionable whether the child ever needed to be placed in foster care at all), and
- how planning for permanent placement, while presuming the possibility of adoption, will result in restoring the child to his parents if that option is valid.

This case is described in Box 2.2.

Box 2.2 Here

Box 2.3 gives illustrations of other types of cases for which permanency planning is appropriate. One case suggests what can happen when it is too late, while another illustrates early intervention followed by early return. Yet another example shows that termination of parental rights with adoption by foster parents can result in a successful permanent placement.

Box 2.1 Experiencing Drift

Foster care is a positive experience for many children, but it also has a negative side which we illustrate here. Repeated examples from the everyday life of the foster child give an idea of what growing up in this status may be like for many children.

- Foster families often ask that the foster child be removed when a crisis occurs, even if the child has been there a long time -- for instance, when the foster father dies or is laid off, or the foster mother becomes pregnant; she's tired and the extra room is needed.

- If a child changes families and schools during primary school years, his reading disabilities or poor vision may go unidentified and untreated.

- It may be difficult for a child to turn out for sports, because he is not in the same school throughout the season.

- It's not uncommon for foster children not to have up-to-date immunizations or to have the same ones two or three times because of frequent moves. Records aren't always accurately kept.

- Not all doctors wish to participate in the public medical assistance program, so foster children often go to a different doctor from the rest of the family.

- A foster child may not know until the last minute where he will spend important anniversaries or holidays. A foster boy soon to be five years old, on being told that he would be adopted by his foster parents, said, "Oh, now I know where I'll be on my birthday."

- At the beginning of the school year when the registration fee is due, the gym fee, school annual, student body card, etc. -- delays in the agency's payment system identify the foster child as different. Special extras at school which cost money may also be passed up.

- Foster children always have a different name from the family and other children they live with, for which they have no simple explanation.

- Foster children in the same home often compare the actions of their various natural parents. They often ask why one child sees his parent every other weekend, while another child visits only once in six months. One parent gives presents and another doesn't.

- Foster children are often caught in jealousies between foster and own parents, and are torn in their loyalties to the families. As a result they miss out on many family functions such as birthdays, picnics, camping, etc. For instance, if a foster family birthday party conflicts with a weekend visit with a parent, the child won't ask for a change of weekends because he knows how angry his own parents might become at the suggestion.

Box 2.2 Case Example: Need for Permanency Planning

A project caseworker was acquainting herself with the foster children in her new, special caseload of children identified as not likely to return home. One was an apparently happy nine-year-old boy in a stable foster home, where he received consistent, loving care and was treated as a member of the family. The case record related that his father had been in the state prison for seven years for sexually abusing Chris when Chris was two. The record showed no contact between the boy and his father, and reports from the prison indicated that the father was seriously disturbed. Parole was not anticipated.

Chris' mother was Japanese and had married the father when he was stationed in Japan as a serviceman. Chris was born shortly after their return to the United States. Further investigation and a visit to the mother's home revealed that the mother had divorced Chris' father after his conviction. Now she was remarried, and was enjoying a compatible marriage and a three-year-old child.

At her own initiative she had maintained contact with Chris about three times a year. She had been described in the case record as "apathetic," yet the new project worker discovered that a poor previous grasp of English and cultural differences prevented the mother from understanding the original juvenile court proceedings and subsequent dealings with the governmental bureaucracies. She was hesitant to question the plans of a state agency.

After becoming acquainted with Chris, the caseworker discovered a superficially conforming boy who was still nonplussed at his separation from his mother. He nurtured a rarely spoken desire to be a member of his own family. Initial activity to increase Chris' involvement with his mother, step-father, and half-brother, was met with pointed resistance from the foster parents who were understandably fearful of losing the child whom they loved. Yet psychological examination confirmed that his emotional ties were to his own mother despite the adequacy of the foster parents.

So after seven long years in foster care (and $14,700 in foster care payments), Chris returned to his mother. Fortunately, the foster parents learned to accept it, keep in contact, and now fill the role of "auntie and uncle". Even though Chris' behavior in the foster home had been good, the former foster parents were the first to notice a relaxed freedom never before apparent. His school grades improved, too.

Box 2.3 Further Case Examples of the Need for Permanency Planning

Prior to passage of the Oregon statute permitting termination of parental rights, a young boy was jerked back and forth by his parents, who were separated and fought continually. His father then murdered his mother, and the boy began a series of foster home placements. Now sixteen, he is well on his way to copying the criminal career of his father. The state lacked an adequate statute or program to intervene effectively.

A young and immature mother, on drugs and without parental skills, neglected her two-year-old child which led to placement in foster care and referral to the project. Faced by the prospect of losing her child permanently, she entered parenting classes, visited regularly, and accepted the project worker's hard-line, contractual mode of counseling. She got her child back after nine months and made good use of homemaker services. Two years later she and her daughter showed every sign of growing up. The mother now praised the help she had complained about at the time. She even made a good choice in a husband who shared her emerging parental interests.

When Margaret was eighteen months old, her young, single mother suffered a psychotic episode. To "spare the child from the degradations of the devil," she stabbed Margaret and held her under a hot shower. Margaret was burned severely and almost died. She was placed in a foster home, where she remained for the next four years. After a year of treatment, the mother began visiting her daughter. Margaret always showed fear at the sight of her mother, by crying and clinging to her foster mother. She began to have nightmares which caused her to wake up screaming one or more times a night. A psychiatrist who evaluated both mother and daughter stated that Margaret had been so traumatized by her early experience that she would never be able to accept her mother. The mother's parental rights were terminated when Margaret was five, and she was adopted by her foster parents. The night she was told of her adoption, Margaret did not have a nightmare, and has never had once since.

How permanency planning was approached in Oregon will be discussed in the chapters to follow. Prolonged indeterminate foster care is often unnecessary, and the demonstration showed that such drift can be brought under control.

CHAPTER 3

CHARACTERISTICS OF PROJECT CASES

This chapter describes the children and their parents who were served by the Oregon project. Of course, the project children were not typical or representative in all respects of all children in foster care, because the project children were selected according to special criteria. Therefore, in order to provide perspective, we compare project children with a random sample of children in foster care from the same counties, as reported in Barriers to Planning for Children in Foster Care (Emlen, et al, 1976). Then, we turn to the use of a typology which was developed by the project for differentiating parents according to the grounds for terminating parental rights.

Three criteria determined selection of children for the project: 1) they were considered unlikely to return home, 2) they were considered adoptable, and 3) in most cases, they had been in foster care at least one year and thus, presumably, were headed for long-term foster care unless permanency planning was undertaken. The project concentrated on children under 12, because they were considered more readily adoptable. For a detailed description, analysis, and discussion of the caseload screening and the basis on which this initial planning decision was made, see Barriers.

How Old Were the Children?

The 509 children accepted for special service by the project ranged in age from 1 to 13 years, with a mean age of 6.8 years at the time they entered the project. Fifty-six percent were under age 6.

Age on Entering Project	Frequency
0-2	27%
3-5	29
6-8	27
9-11	12
12+	5
	100% n=509

In a 1974 survey of Oregon children in foster family care, we found 58 percent were 12 or over (Barriers). Thus, especially with respect to age, the project children were a special selection.

Fifty-one percent of project children were girls.

How Long Had They Been in Foster Care?

Half the children had been in foster care for two or more years prior to entering the project. The mean number of months was 29, with a standard deviation of two years.

	Before Project	In Project	Total Months in Foster Care
Mean	29	16	45
St. Dev.	25	10	49

The median number of placements was two, with a mean of 2.8 and standard deviation of 2.3. Before entering the project, 33 percent had had one placement, and 30 percent had had two.

What was their Ethnic Background?

The project sample was predominantly white.

80%	White
10%	Indian
2%	Black
8%	Chicano and other
100%	

Oregon's Native-American population, though small, was disproportionately represented among project cases. Conditions are changing, however, as alternative placements on the reservations are being developed.

Project outcomes showed fewer Indians adopted than whites. See Table 3.1. The follow-up study indicates that permanent placements made for non-white children were no less successful than those made for Caucasian children. However, they took longer to make, and a higher percentage of non-white children are still in the "plan in progress" category, perhaps due to the additional ramifications of negotiating ethnic issues or finding appropriate placement resources.

TABLE 3.1

Outcome of Project Cases by Race

	White		Non-White		Total	
Contractual long-term foster care	24	6%	13	11%	37	7%
Returned to parents	108	27	24	21	132	26
Adoptive placement	157	40	29	25	186	36
Placed with relatives	14	4	6	5	20	4
Plan in progress	52	13	33	28	85	17
Efforts not successful	38	10	11	10	49	10
Total	393	100%	116	100%	509	100%

What was the Education and Employment History of the Parents?

The parents lacked education and employment, and their marginal economic circumstances both contributed to and reflected the reasons why the children were thought not likely to return home. Eighty-three percent of the mothers and 85 percent of the fathers had not gone past 8th grade. Only 8 percent of the mothers, 31 percent of the biological fathers, and 44 percent of the legal fathers could report having had steady employment at the same job or consistent, though not steady, employment. Seventy-six percent of the mothers had always or usually been on public assistance; an additional 8 percent were incarcerated or hospitalized. Forty-six percent of the fathers always or usually had been on public assistance; 10 percent were incarcerated or hospitalized.

How Typical Were Project Cases of All Children under 12 in Foster Care?

The project children were not selected randomly from foster care caseloads, and, therefore, one may hypothesize that the results of the demonstration were partly attributable to successful selection of those who would benefit. To assess this possibility we can compare project cases with a random sample drawn from all children in foster care screened in the project counties. We shall limit the comparison group to those under 12 years of age, since that was the intent also of the demonstration.

On both groups we rated 10 client barriers to permanent placement (as described in Barriers). Two were the condition of the child's mother and father as barriers to the child's returning home. Four ratings dealt with child "placeability" barriers: physical and financial obstacles, the child's ability to cope socially, and

overall placeability. Four ratings measured the emotional ties of the child to mother, father, siblings and foster parents. These bonds were regarded as a basis for making or avoiding placements.

Table 3.2 compares project cases to the random foster care group. Although the two groups do not differ in their rated emotional attachments, they do differ in all other ways. Project cases consistently were rated lower on placement barriers arising from the behavior, circumstances, or appearance of the child. A similar difference may be noted with respect to condition of the mother; project mothers were rated as in better condition to take their children back.

In other words, the project did to some extent select those children from foster care caseloads who were likely to profit from permanent planning efforts. This is not surprising, nor is it a criticism of the project. Indeed, one of its purposes was to try to identify those children who were adoptable or who could be returned home. Children over 12, for instance, were not included in the project because older foster children were considered to present greater barriers to permanent placement.

Table 3.2 Here

Testing a Typology of Grounds for Termination of Parental Rights

Whenever it is thought that a child might not return to his parents, then consideration of an alternative form of permanency for the child raises the presumption that parental rights may need to be terminated. The project developed a simple typology of the grounds on which this could be done. The classification is compatible with Oregon statute and clarified the questions that needed to be asked. The utility of the typology lay in the direction it gave social workers in knowing how to proceed. Its importance is apparent in the Handbook, which describes the method of using the typology.

Yet its validity rests on the assumption that the behavior of parents does indeed classify as predominantly of one kind or another. What are the types? Two deal with parental absence: abandonment and desertion. Abandonment reflects intent to leave a child to others and not return. It is an act after which the parent makes no further contact with the child or agency. Perhaps it represents an informal behavioral expression of relinquishment by those for whom flight is a characteristic mode of coping with life. They vote with their feet. Of the 509 project children, 12 percent of their mothers and 37 percent of their fathers were classified as having abandoned their children.

TABLE 3.2

Barriers to Permanent Placement:
Project Children Compared to Random Sample
of Oregon Children under 12 in Foster Care

Client Barriers	Project Children n=509 (mean age=6.8)		Random Sample of all Children in Foster Care in Project Counties n=84 (mean age=6.7)	
	Mean rating	St. Dev.	Mean rating	St. Dev.
Condition of mother	4.1	1.3	5.0	1.3
Placeability barriers:				
Physical	1.3	.9	1.8	1.6
Coping	2.0	1.2	2.6	2.8
Financial	1.6	1.1	2.3	2.6
Overall	1.7	.9	2.3	2.1
Bonds to:				
Mother	2.1	1.2	2.2	1.3
Father	1.5	1.0	1.6	1.1
Siblings	3.1	1.6	2.7	2.4
Foster parents	3.1	1.4	3.3	4.7

Desertion is less clear because it can involve occasional or incidental efforts to contact the child or to take the child back. The motivation is clouded perhaps by ambivalence, and the behavior often does not match the expressed intent. Mother desertion accounted for 14 percent of the children, father desertion for 24 percent. Mother absence for abandonment and desertion combined was 26 percent, and father absence was 61 percent. Five percent of the children had mothers who had died; seven percent had deceased fathers.

Parents who are present, yet whose ability to function as parents is at issue, were classified in either of two categories: "conduct" or "condition". For both types the critical question is whether parental functioning is at or below a minimum sufficient level with respect to the child's safety, protection, care, and development. However, if the behavior is due to incapacity diagnosably attributable to severe mental or chronic condition, then it is classified "condition," and the parent is not required to undergo intensive rehabilitation efforts that are required of "conduct" parents. For "conduct" parents, a highly contractual approach is usually needed to change their chaotic behavior, to clarify what is required for return of the child, or to determine the parents' motivation with regard to the child's future. Table 3.3 shows the percent of each type as classified by the caseworker. More mothers were classified in the "conduct" category than in any of the others.

Table 3.3 Here

As a check on this forced-choice typing of all project cases, we gave workers a chance to rate how much the case resembled each category. The results, which are shown on the right-hand column of Table 3.3, indicate a surprisingly good fit or ability to use the typology. Cross tabulations and correlations, however, do show some relationships:

- abandonment is like desertion;
- desertion is like conduct but not condition;
- condition is like conduct but not like desertion or abandonment.

In the percentages cited above, the reader will have noticed large differences between mothers and fathers in how their behavior was classified. The differences become more dramatic when one combines mother and father types. This is done in Table 3.4, which combines abandonment with desertion and conduct with condition, but ignores

TABLE 3.3

Typology of Grounds for Termination of Parental Rights

Name _____

CLASSIFICATION OF PARENTS ID# _____

The project director believes that most cases leading to termination of parental rights can be classified as one of 4 types, called: Abandonment, Desertion, Conduct, or Condition. They differ in the motivations, abilities, and behaviors of parents toward his child, and these differences call for different responses by the child welfare agency.

Now we would like you to consider the behavior of this parent toward his child. Below are the four categories of behavior. On the left, check the category which best describes the relationship of each parent to this child. On the right considering each type separately, and independently of others, indicate how adequately it describes the behavior.

FOR EACH PARENT, CHECK ONLY ONE TYPE			FOR EACH PARENT, RATE ON EACH TYPE		
Legal or natural mother	Legal or natural father		Legal or natural mother	Legal or natural father	
12%	37%	Abandonment of the child - This category consists of those parents who have had no contact with the child or the agency for 6 months or more. In this group would be those: (1) who have left the child with the stated or apparent intent to abdicate further responsibility or (2) who cannot be identified as the child's parent. For example, the parent who leaves the baby on a doorstep.	11%	36%	Not at all like this Somewhat like this More like this than not Almost exactly like this
14%	24%	Desertion of the child - This category consists of parents who only occasionally contact the agency and who may make some incidental efforts to contact the child. For example, the parent who may send his child a gift or make a visit on Christmas or the child's birthday.	16%	25%	Not at all like this Somewhat like this More like this than not Almost exactly like this
50%	22%	Conduct of the parent - This type of parent may contact the agency frequently but sporadically, but does not adjust her circumstances to permit return of the child. This parent may make plans to obtain custody but efforts to carry them out have been transitory. For example, those parents who (1) exist in such constant chaos that they can barely care for themselves, (2) are for the most part antagonistic and uncooperative with the agency and the foster parents.	41%	20%	Not at all like this Somewhat like this More like this than not Almost exactly like this
19%	9%	Condition of the parent - A diagnosed mental, psychological, or intellectual condition carry- a prognosis of unlikely to change which prevents reunification of this family. For example, the chronic schizophrenic, the alcoholic, the severely mentally retarded, or the parent with some combination of these conditions.	27%	12%	Not at all like this Somewhat like this More like this than not Almost exactly like this
5%	7%	Dead			
100%	100%	n=509			

cases with a dead parent. The results show a relationship between mother and father behavior; fathers "split" while mothers stay and fail to function adequately, but not vice versa. Only 22 children had unfit fathers and absent mothers, while 194 children had unfit mothers and absent fathers.

TABLE 3.4

Combined Typology of Mothers and Fathers

		Behavior of Father: Abandonment or Desertion	Behavior of Father: Conduct or Condition	
Behavior of Mother	Abandonment or Desertion	106	22	128
	Conduct or Condition	194	130	324
		300	152	452 children

Yule's Q = .53

The typology was related to project outcomes in predictable ways. If both parents had abandoned or deserted, children were more likely to be adopted than to be returned home. However, no overall difference was found in the time it took to achieve a permanent placement.

How Did the Actual Outcomes Relate to Original Plans?

For those project cases that were selected by means of the 1974 caseload screening, we can compare project outcomes with the "likely outcomes" or original decisions as to which plan the child needed. There were 233 of these. These results, shown in Table 3.5, suggest that initial judgments are confirmed by actual outcomes better than three-fifths of the time, for completed cases. The rate at which permanent plans of some kind were completed was even higher since any option for permanency was pursued by project workers if the evidence indicated a change in plan was needed.

Table 3.5 Here

TABLE 3.5

Original Decision About Likely Outcomes or Plan Needed

Original Decision

Actual Project Outcome	Return Home	Adoptable by: Current Fost. Par.	Adoptable by: Others	Adoptable by: Already free	Not adoptable: Current fos hm	Not adoptable: Other fos hm	Not adoptable: Residential treatment	
Return home	24	5	13	0	4	0	1	
Adopted by foster parents	6	35	11	4	2	0	0	
Adopted by new parents	3	2	32	5	1	0	0	
Placed with relatives	0	0	0	0	0	0	0	
Contractual long-term foster care	4	13	3	1	6	1	0	
Plan in progress	5	8	17	2	3	0	0	
Efforts not successful	3	3	12	1	3	0	0	
	45	66	88	13	19	1	1	233
Outcomes as Planned or predicted as percent of completed cases	65%	64%	54%	90%				
Permanent Plans as percent of total	82%	83%	67%	69%				

Did Types of Cases Require Differing Amounts of Effort?

Another way of reporting project results is to measure how many months the project took for each type of case using the combined types for mother and father. Perspective is provided by comparing also the time these children were in foster care before entering the special project. The results in Table 3.6 show a substantial difference in mean time in foster care before entering the project; 36 months for abandonment-desertion and 21 months for conduct-condition. Yet there was very little difference in the time the case was in the project, which averaged 16 months. It would appear that when cases are allowed to drift they do so for different reasons, but that concerted permanent planning efforts are of comparable duration despite the fact that procedures differ for each type of case.

Table 3.6 Here

The reason for the similarity in time taken for types of cases may be that the type of case does not strongly determine the permanent plan. Restoration and adoption were pursued in any case in accordance with the facts of parental adequacy and circumstance. However, some permanent placements, such as returning a child to his parents, do take less time than others to achieve, and are in part determined by service history, i.e., by how long the child was in foster care before entering the project. For example, acceptance of long-term foster care as a formal option for permanency is associated with prolonged foster care prior to entering the project. The results are shown in Table 3.7. As one might expect, cases still "in progress" at project's end were taking longer than others, as were those classified as not successful. The relatively longer time spent with these cases reflects the project's willingness to expend considerable effort for as long as necessary in pursuit of permanency.

Table 3.7 Here

TABLE 3.6

Mean Months in Foster Care Before Project and In Project, by Type of Case (Combined Mother and Father Typology)

		Before Project		In Project		Total Time in FC	
Type	n	Mean	(St. Dev.)	Mean	(St Dev.)	Mean	(St. Dev.)
Abandonment or Desertion, both father and mother	81/106	36	(26)	19	(9)	55	(29)
Father Aban/Desertion; Mother conduct or condition	161/191	26	(23)	16	(10)	52	(26)
Conduct or Condition, both father and mother	109/129	21	(20)	15	(10)	36	(24)
Mother Aban/Desertion; father conduct or condition	17/21	36	(23)	16	(9)	52	(21)
One Parent dead or data missing	44/62	44	(33)	18	(8)	62	(37)
Total	412/509	29	(25)	16	(10)	45	(28)

TABLE 3.7

Mean Months in Foster Care Before Project and In Project, by Permanent Planning Outcome

Outcome	n	Before Project		In Project		Total Time in FC	
Returned to parents	108/132	18	(20)	9	(8)	27	(21)
Adopted by foster parents	81/94	26	(26)	17	(7)	53	(27)
Adopted by new parents	71/92	20	(20)	13	(6)	33	(20)
Placed with relatives	4/20	26	(11)	5	(5)	31	(9)
Long-term foster care	33/37	57	(80)	15	(8)	72	(32)
Plan in progress	74/85	30	(22)	26	(7)	56	(24)
Efforts not successful	41/49	32	(26)	26	(6)	58	(27)
Total	412/509	29	(25)	16	(10)	45	(28)

CHAPTER 4

PROGRAM AND METHOD

We have cited the results of the demonstration and described the problems that the project was designed to overcome. In this chapter we describe what the project did and its method. Those who ask whether the Oregon project could be repeated in other states need to know how many people worked on it and what they did. They need to know how much administrative support was required. Further, they need to know the institutional framework that made the demonstration possible, such as the statutes, the body of case law, and the pathways for exit from foster care that provide options for permanent planning. Finally, they need to know the philosophy and method employed by the project -- the technology of permanent planning which the demonstration had to develop. Let us now turn to the key elements which contributed to the results of the project:

- Staff resources and effort: direct services
- Administrative resources for program support
- Institutional framework for permanent planning
- Method

Staff Resources and Effort: Direct Service

At one level are all the direct services to families, the effort and activities necessary to achieve permanency planning goals. Those providing services to clients are:

- social workers,
- attorneys,
- expert witnesses,
- auxiliary services, and
- foster parents.

Social Workers. Officially, the direct service period of the demonstration project lasted two years, starting November 1, 1973. However, preparation for the project began well before that date, and the results reported in Chapter 1 reflect continued effort by regular Children's Services Division staff during the third year, when the state incorporated the demonstration's work into its existing services. At the start of the project the 15 project counties identified children who were not likely to return home by reviewing cases in each caseload. These cases were referred to the project, and a special project worker was assigned to the case. The project consisted of 11-1/2 caseloads.

In all, fifteen project workers served during the two-year period, one worker per county in the larger counties. Four counties had a change of worker. Four workers had master's degrees in social work, and only one had had no previous experience with the Children's Services Division or in child welfare. Half of the project workers were rated very highly by the project director in overall performance, attitude, energy, and effectiveness.

The project became convinced that workers were most effective when handling about 15 cases at a time, although during the project they had as many as 35. Wherever possible, workers in the demonstration stopped taking new cases by early in 1975 in order to complete their cases by that summer. The total number of cases they handled ranged from 35 to 73, averaging about 45 cases each. The amount of effort required depended very much on the number of court hearings for which a caseworker had to prepare. In order to provide a portrait of one caseload in one county, we will show the results for the most productive project worker. This portrait represents the upper limit of what might have been expected during the project. Indeed, the worker was somewhat burned out after two years of sustained effort. The following chart shows the number of cases he carried each month and the number of court hearings for which he prepared.

Table 4.1 Here

Another way of describing the effort of project workers is to analyze the kinds of activities they performed. The Management Systems Unit of the Children's Services Division studied the activities of a sample of seven project workers, and the amount of time spent on them. The workers were interviewed to find out what they actually did, and then the seven workers, their supervisors, Central Office staff, and the project director reviewed the resulting task descriptions, which are summarized below.*

* This task analysis is abstracted from a report by James Burri, Children's Services Division, Salem.

TABLE 4.1

Caseload of One Project Worker

Month		Number of Cases in Caseload	Number of Court Hearings
1973	October	3	1
	November	10	2
	December	10	0
1974	January	10	4
	February	13	1
	March	18	4
	April	23	4
	May	26	5
	June	31	1
	July	35	4
	August	31	4
	September	40	6
	October	46	5
	November	54	7
	December	56	10
1975	January	56	9
	February	56	9
	March	51	5
	April	52	11
	May	52	6
	June	51	2

Training

- Training other workers in the agency in permanent planning: work with parents, problems of long-term foster care, hearings procedures, collecting evidence, adoption, termination of parental rights, juvenile law, and other matters.

- Case consultation with and encouragement of other caseworkers on documenting and gathering evidence, court procedures, locating missing parents, and strategies of permanent planning for particular cases.

Case Assessment

- For newly assigned cases, reviewing child's present circumstances, consulting with previous caseworker, and deciding which tasks, if any, the previous worker would retain.

- Working with parents to learn their situation, to outline a service plan with them, to explain agency policies on return of the child, to find out what services they needed, and to refer family members to appropriate agencies.

- Consulting with others who knew the parents (doctors, agency personnel, foster parents, etc.) to obtain additional information.

- Compiling and assessing information to determine if additional facts are needed and what actions could be taken.

- Developing a relationship with the family to encourage them to use services that could help them.

- Diagnosing level of family functioning.

- Developing goals jointly with parents by discussing alternatives and explaining steps necessary to implement the service plan.

- Coordinating contacts between the family and other agencies to implement service plan.

- Assessing the effectiveness of outside services for the family and providing direct services to children, adolescents, and parents on money management, housing, health, child-rearing, school, and general ability of parent to cope.

- Reassessing goals, noting progress in meeting short-term goals, and helping family to decide whether changes in the service plan are needed.

Foster Care Placement

- Interviews prior to placement in foster care: discussing foster care with parents, talking with prospective foster parents, and answering child's questions regarding placement.
- Supervising foster care placement: dealing with day-to-day problems and concerns about child's adjustment to the foster home.
- Attending, observing, supervising, and assessing child's visits with parents.
- Interviews with child's parents and foster parents to explore possibilities for returning the child home.
- Conducting group meetings of foster parents to discuss their concerns.
- Dealing with runaways and with law enforcement agencies.
- Working with foster parents to document changes in child's behavior.

Obtaining Evidence for Legal Action

- Talking to those with knowledge of the parents or child and determining their suitability as witnesses in court action.
- Consulting with other caseworkers and CSD staff on whether to take the case to court.

Organizing Evidence

- Compiling evidence and determining what evidence is missing.
- Researching pertinent statutes and case law.
- Preparing case and evidence for court.
- Working with child's attorney and parent's attorney.

- Preparing forms for termination proceedings.
- Working with the district attorney and public defender to get the petition written; coordinating the case.
- Working with court staff prior to hearing: scheduling witnesses and parents for hearings.

Hearings

- Attending hearings and waiting to testify.
- Testifying on the witness stand, answering questions of attorneys and judge.
- Post-hearing conferences with child and parents to deal with their reaction to the judge's decision.

Other Legal Activities

- Explaining to parents the option of voluntary relinquishment.
- Setting review hearings, consulting with judge about specific actions parents must take to get back the child.
- Seeking the support of judges, juvenile department staff, and others for the philosophy of permanent planning.

Adoptive Planning

- Working with parents, foster parents, and child to prepare for child's adoption.
- Obtaining information for report to Adoption Committee.
- Consulting with Adoption Committee, coordinating arrangements for placement.
- Writing progress reports for agency about adoptive placement, advising state office of current status.

Table 4.2 shows the results of a time study, again by CSD analyst James Burri. The time of five project workers in performing the activities listed above was analyzed. The super-worker whose caseload was described earlier was not included in the time study, and the

results were probably fairly typical. Again, it is obvious from the results that workers spent the greatest proportion of their time assessing cases and obtaining and organizing evidence for court hearings.

Table 4.2 Here

Figure 4.1 is a photographically reduced computer print-out of a time line of permanent planning programs in one case. It also shows the frequency of each kind of action for all 509 project children.

Chapter 5 gives a detailed account of one project worker's activities in a case, from referral to final disposition of the children.

Attorneys. In the case shown in Figure 4.1, the project's special attorney, under contract with the Metropolitan Public Defender, represented the child, but he did so for only 25 percent of the project children involved in termination hearings. The Public Defender's Office, whose contributions will be described in Chapter 6, represented children in court hearings, clarified important legal issues, consulted with project staff, and contributed to their training. Other attorneys also represented children, and, of course, many cases needed much less legal work than the one in the print-out. For all project cases, there were 225 voluntary relinquishments and 228 termination petitions filed.

Expert Witnesses. The project employed expert witnesses to testify in court, particularly if the mental condition of the parent was at issue. Expert witnesses were used in all cases involving termination of parental rights on grounds of parental conduct or condition, since the project's position was that harm to the child must be established as related to parental inadequacies.

Auxiliary Services. In addition to providing direct services themselves, project workers also made extensive use of community resources. For example, a child might be able to return to his young parent, shaky in homemaking or parenting skills, only if a homemaker service could work with the family for a period of time. Likewise, parents might regain their children after productive sessions at parent training classes.

TABLE 4.2

Permanent Planning Time Study

Foster Care Worker's Time Spent
Providing Services

	Time Spent	
	% of service time	% of 40 hour week
Case Assessment	32%	18%
Organizing Evidence	31	17
Hearings	10	6
Foster Care	10	6
Adoption Planning	8	5
Obtaining Evidence	6	3
Training	3	2
Direct Service	100%	56%
Not Direct Service		44%
Work related (meetings)	19%	
Personal	17	
Travel	8	
Total		100%

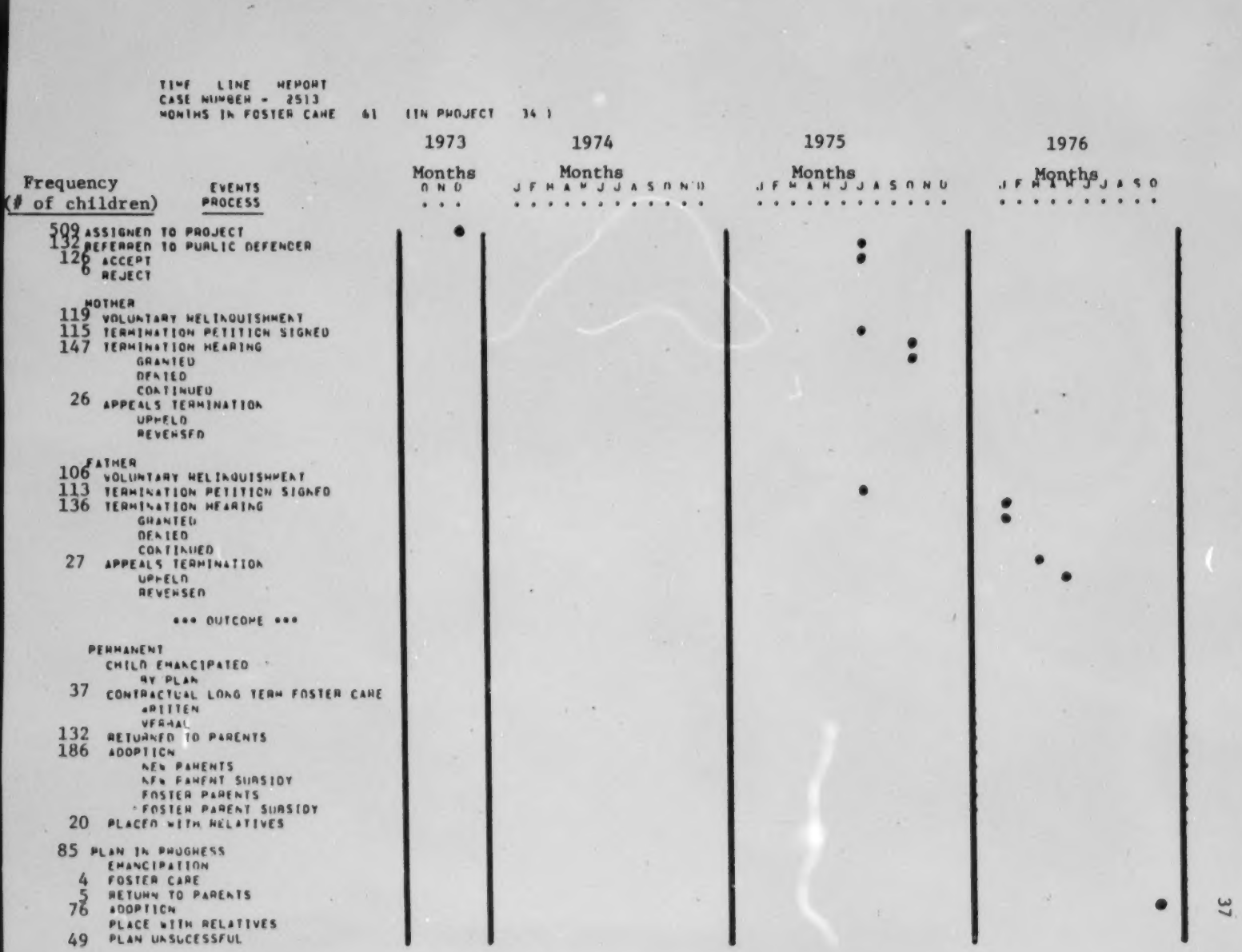


Figure 4.1 Sample of Time Line of One Case (with project frequencies added)

Foster Parents. Foster parents were also a force in permanent planning; they can contribute to planning goals of the agency when those goals are made clear. They helped to prepare the child for a return home, as well as for permanent separation from his parent and the transition from foster home to adoptive home. In many cases, they themselves became the adoptive parents. When parental rights were terminated in court, foster parents testified about the condition of the child after returning from parental visits. Their participation was, of course, essential in arranging formalized long-term foster care.

Administrative Resources for Program Support

The efforts of those providing services directly to clients loses direction unless it is supported administratively by supervisors and top level agency managers. Case screening procedures and commitment to training are necessary manifestations of agency support of permanency planning.

Expert Leadership, Supervision, and Consultation. If one were forced to choose a single contribution that most influenced project results, one would have to point to the project director. His commitment, expertise, dynamism, and sense of direction were formidable; he persuaded others to make hard decisions promptly and work towards specific goals for children in the shortest possible time. Such personal factors are common in demonstration projects, and, in evaluation research, it is customary to wonder whether a project could be replicated in other places without the existence of such personalities. However, that is not a reasonable view. There is no reason to suppose that only techniques and procedures are replicable. If leadership is a critical factor, then that, too, must be found.

Let us look in greater detail at the contributions of the project director, Victor Pike, a professionally trained social worker who knew the field well, had had 15 years experience in child welfare, as a caseworker and a supervisor for Children's Services Division. Highly motivated to lessen drift in foster care, he was the principal author of the demonstration grant proposal that led to the project. He helped to revise Oregon's termination of parental rights statute, and in his own practice had had experience in going to court and in combining legal process with casework. During the project, Pike devoted most of his time to assisting project workers and other caseworkers on the firing line. Armed with a case notebook in which he recorded the plans and progress on every case in the project, he acted as a circuit rider going from county to county. He gave detailed supervision and

consultation to caseworkers and supervisors, to district attorneys and to lawyers, including the special attorney with the Public Defender's Office. He was constantly available for consultation. Clearly there is no substitute for a person like this in a permanent planning system.

Administrative Support from Top Management. "Freeing Children for Permanent Placement" started out as a demonstration project in only half of Oregon's counties, and it did not operate as would a fully integrated unit in a statewide program funded from the base budget. A federally funded demonstration project is by its nature a special project. Still, the administrative support it received was an important element. The administrative relationship between the project and the state agency is treated in the last chapter of this volume, which describes how the demonstration became implemented in the statewide system. For the purposes of this chapter, it should be pointed out that the state agency did provide the fiscal and administrative support.

Case Screening. A research and management tool that reinforced the permanent planning process was a caseload screening. The project began with a screening which asked a single question about each case, "Is this child likely to return home?" It did not ask if the caseworker had a plan, as most caseworkers were not operating under fully developed service plans to place the child in a permanent home. So the question itself had an impact. For many workers, it was difficult to answer. The screening instrument is shown in Figure 4.2. The use of this screening device and the results obtained from it were described fully in Barriers to Planning for Children in Foster Care. The case screening not only set the stage for case monitoring and case management, but also gave information that influenced the agency to ask whether the options for permanent planning were indeed available, whether the provisions of the statute, the policy of the agency, the management information system, the training programs, and the understanding and actions of caseworkers and supervisors, allowed them to be implemented.

Figure 4.2 Here

Training. Like the establishment of case screening procedures, agency-sponsored training gives direction to direct service activities. The project conducted its own training program for project workers and others associated with it. The content of this training was written up in a manual, Permanent Planning for Children in Foster Care: A Handbook for Social Workers. It is described below in this chapter's section on method.

County or District:_____ Child's Name:_____

Caseworker's Name:_____ Birthdate:_____

Case Number:_____

Case Screening Questionnaire

Instructions: CHECK ONLY ONE BOX.

☐ It is very likely that this child will return home very soon.

☐ It is likely that this child will return home, but there are obstacles to overcome.

It is likely that this child will not return home, and would be adoptable:

☐ --by current foster parents.

☐ --by other adoptive parents.

☐ Child is already legally free and awaiting adoptive placement.

It is likely that this child will not return home, and would not be adoptable

☐ --needs permanent foster care with current foster parents.

☐ --needs permanent foster care with other foster parents or relatives.

☐ --needs other kind of setting: (e.g., residential treatment or institutional setting).

☐ Child is no longer in foster care.

Figure 4.2 Screening Instrument

The training emphasized two things: the importance of clear planning goals, and the special knowledge and procedures needed to achieve particular permanent plans. Termination of parental rights and voluntary relinquishments were always alternatives to be considered in any case where a child was believed unlikely to return home. But caseworkers needed specific skills to take cases to court, skills in working with the child's attorney, preparing their oral testimony, documenting the evidence, searching for missing parents, obtaining expert psychiatric opinions, and choosing the grounds for termination of parental rights.

Institutional Framework for Permanent Planning

We have examined the staff capacity required -- those elements that appear on the budget because they take staff time. Let us now turn to the broad institutional framework that makes permanent planning possible. These institutional elements reflect the support of the community as a whole for a permanency planning system. They are:

- a sound and useful statute,
- a body of case law,
- established pathways for a child's exit from foster care, formulated in agency policy manuals, administrative rules, and standard procedures, and
- a climate of opinion which favors permanent family ties for children.

All states have these elements to some degree, and, in Oregon, the project helped to develop such an institutional framework.

A Sound and Useful Statute. In the field of child welfare, there is no escape from the difficult obligation to make decisions of life-time importance for children. Whether or when to remove a child for his protection, whether or when to return him, whether or when to seek temporary or permanent placement with a new family, are decisions that society must face. Statutory authority for making these decisions must be established by the legislature, tested in the courts, and implemented by designated agencies according to sound procedures and due process. Case by case, the decision-making process is initiated in a children's services agency and reviewed or decided finally in court. In Oregon, careful work went into the writing, passage, testing, and revision of a statute that authorized, under certain conditions, termination of parental rights and related permanent planning actions.

While not ideal, it proved workable. Further revisions are being sought. The statute is reprinted in Chapter 6, p. 69, along with a discussion of the 1973 revision.

A Body of Case Law. Caseworker initiative coupled with legal representation for the child helped to develop a body of case law, and these appellate decisions, in turn, were useful in guiding practice. Much of Oregon's case law on termination of parental rights and related procedures came from project cases and project activity. Some of these cases are discussed in Chapter 6. The project also compiled and kept up to date a notebook of appellate decisions that spoke to these and other issues:

- right to counsel,
- obligations of the child welfare agency,
- the meaning of "reasonable efforts" by the agency,
- desertion,
- mental illness as condition of unfitness,
- best interest of the child,
- ability to care for one child but not others,
- due process grounds,
- grandparents' rights,
- agency records as evidence,
- jurisdiction of Indians off the reservation, and
- physician-patient privilege of expert witnesses.

Pathways for Exit from Foster Care. Although the demonstration project began by asking what might sound like a hypothetical question, "Is this child likely to return home?" its answer depended on real conditions. It depended on which options were available in Oregon. The screening instrument described above cited the potentially available options, though some were more firmly implanted than others in the institutional framework. A pathway from foster care does not exist unless it has a basis in statute, in policy directives, administrative rules, and standard procedures. For example, guardianship for foster children was not an option in Oregon because CSD legally cannot make foster care

payments to guardians. As another example, subsidized adoption was only a limited resource for the Oregon project. Adoptions of two children were made possible by subsidies. While the Oregon results show that many adoptions can take place without subsidy, financial barriers to permanent placement were rated at least moderate for 25 percent of children in foster care (Emlen, et al, Barriers, p. 7.15). Another barrier to permanent planning was simply ignorance of available planning options, which, in effect, closed these exits from foster care. Adoption by foster parents, for instance, was not known to be an option by some caseworkers in Oregon, perhaps because it is not permitted in some other states.

Climate of Opinion. In our study of barriers to planning for children in foster care (Barriers, Emlen et al, 1976), we found that social worker attitudes toward termination of parental rights, and the general climate of attitudes in the particular county where that worker practices, strongly determined the worker's permanent planning decisions. County differences in what workers could expect to accomplish, and in their decisiveness about permanent planning, emerged as important institutional forces.

In addition, the knowledge, skills, and experience with the tools of decisive action were also often lacking. Part of the purpose of the demonstration project was to fill this gap in technology by discovering the methods and procedures that would be successful in achieving permanent outcomes. So let us now turn to method.

Method

Permanent planning requires a body of knowledge, its content and method, to guide practice. The technology of permanency planning is still developing, and the profession must continue to build the knowledge and procedural safeguards that are needed in this difficult area of practice. The key features of the methodology are:

- a goal-oriented philosophy regarding foster care practice,
- a decision-making structure with criteria and standards for the decisions to be made,
- the diagnostic typology presented in Chapter 3 which helped workers choose appropriate permanent planning strategies, and
- a manual of procedures for working with lawyers, district attorneys, and the court.

A Goal-Oriented Philosophy of Foster Care Practice. It is important not to underestimate the motivation and sense of purpose of the demonstration project to overcome the barriers to planning for children. The foster care system does tend to favor the maintenance of relationships in foster care, and the use of foster care itself as a treatment or care setting, rather than the planning necessary to secure the child's future in a family. In many states, the lack of case review procedures is only a symptom of, as well as a contributor to, the practice of allowing foster care drift, and Oregon's 31 percent drop in the foster home care population between June, 1972, and June, 1976, was probably in part attributable to case review. Indecisiveness and deeply ingrained attitudes favor the maintenance of placement in foster care. A strong commitment from caseworkers and all levels of the state agency, as well as from other institutions and society at large, is needed to change the character of foster care practice.

Most of the professional literature on foster care and the standards for foster care practice (APWA, 1975), present so fully the complexities of practice in foster care that the goals become diffuse and the decision-making process engulfed. In one sense there is nothing new about goal-directed social work practice. One could say, "But that's just good casework." True enough, yet the difference occurs when the goal is kept alive, and the methods are appropriate to the goal. For example, if the child is to return home, visiting with the parents must take place (Fanshel, 1975). If the child is not to return to his parent, other procedures must be followed, in order to ascertain and implement an alternative permanent placement.

Belief in the importance to children of permanence and family ties is a mixture of knowledge, faith, and assumption. Knowledge is still lacking on the effect of permanence and drift, of placement and replacement, on children's development. Further knowledge is needed to validate and articulate a goal-oriented philosophy of practice for foster care.

Decision-Making Structure. From initial caseload screening to final disposition, the demonstration project followed a "decision tree". The initial question branched out into others. If the first answer was "Yes, the child is likely to go home," then we asked whether it would be soon or whether there were obstacles to overcome. If the child was not likely to go home, we asked whether this was because of parental condition, parental absence, or parental conduct. The answers to these questions in turn led to next steps and to questions about whether the child was adoptable, by whom, or was another kind of placement needed. The decision tree, presented in Figure 4.3, describes the

logic of the procedures, the decisions, and the service efforts as well as the outcomes or goals. The handbook for social workers discusses these decision points step by step; each chapter proceeds down the decision tree, from how to assess the barriers to returning the child home, how to structure a treatment program, how to choose an alternative permanent plan, how to free the child for adoption, and how to prepare a termination case.

Figure 4.3 Here

Diagnostic Typology. Incorporated in the decision-making structure was a typology of cases discussed in Chapter 3. This typology in turn, led to unique sets of caseworker tasks depending on whether the statutory grounds based on parental behavior were classified as conduct, condition, desertion and abandonment. This diagnostic framework is presented in Figure 4.4, and is discussed in detail in the Handbook.

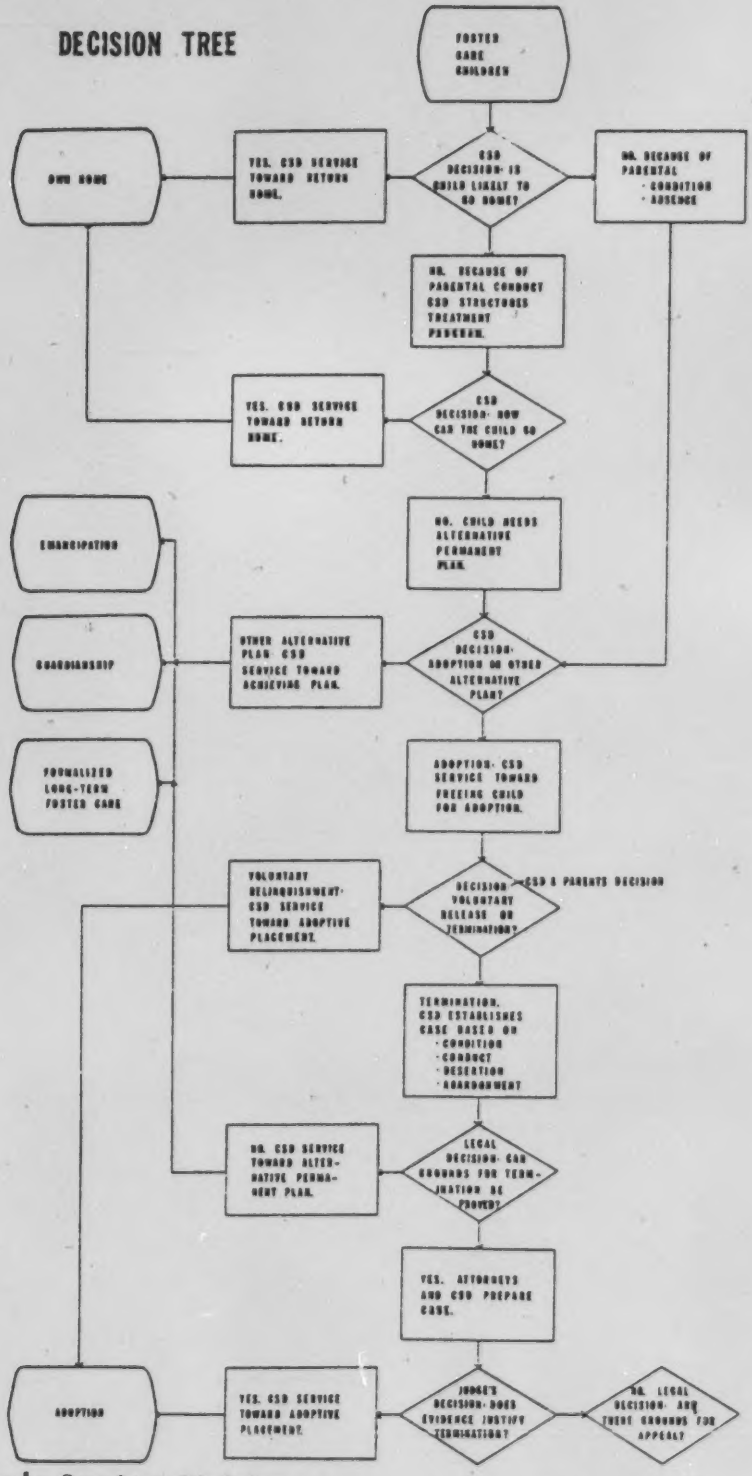
Figure 4.4 Here

Court Procedures. Since court hearings are dominating events in the permanent planning process, the following figure shows a checklist of the tasks involved in the conduct of a termination of parental rights case.

Figure 4.5 Here

Conclusion

In this chapter we have presented a comprehensive overview of the key elements of the demonstration project that probably contributed to the results that were reported. A more definitive assessment of whether it was the demonstration project that really did it, or whether the results can also be attributed to general trends occurring in the state of Oregon, will be addressed in a third volume. It reports the results of the project county-by-county, and describes the efforts, the barriers, and the changes that occurred in each county.


DECISION TREE
FOSTER CARE CHILDREN
OWN HOME
YES. CSD SERVICE TOWARD RETURN HOME.
CSD DECISION: IS CHILD LIKELY TO GO HOME?
NO. BECAUSE OF PARENTAL · CONDITION · ABSENCE
NO. BECAUSE OF PARENTAL CONDUCT CSD STRUCTURES TREATMENT PROGRAM.
YES. CSD SERVICE TOWARD RETURN HOME.
CSD DECISION: HOW CAN THE CHILD GO HOME?
EMANCIPATION
NO. CHILD NEEDS ALTERNATIVE PERMANENT PLAN.
GUARDIANSHIP
OTHER ALTERNATIVE PLAN: CSD SERVICE TOWARD ACHIEVING PLAN.
CSD DECISION: ADOPTION OR OTHER ALTERNATIVE PLAN?
FORMALIZED LONG-TERM FOSTER CARE
ADOPTION: CSD SERVICE TOWARD FREEING CHILD FOR ADOPTION.
VOLUNTARY RELINQUISHMENT: CSD SERVICE TOWARD ADOPTIVE PLACEMENT.
DECISION: VOLUNTARY RELEASE OR TERMINATION?
CSD & PARENTS DECISION
TERMINATION. CSD ESTABLISHES CASE BASED ON · CONDITION · CONDUCT · DESERTION · ABANDONMENT
NO. CSD SERVICE TOWARD ALTERNATIVE PERMANENT PLAN.
LEGAL DECISION: CAN GROUNDS FOR TERMINATION BE PROVED?
YES. ATTORNEYS AND CSD PREPARE CASE.
ADOPTION
YES. CSD SERVICE TOWARD ADOPTIVE PLACEMENT.
JUDGE'S DECISION: DOES EVIDENCE JUSTIFY TERMINATION?
NO. LEGAL DECISION: ARE THERE GROUNDS FOR APPEAL?

CSD is Children's Services Division

Figure 4.3 Decision Tree

	CONDITION	CONDUCT	DESERTION	ABANDONMENT
Statutory Grounds:	Mental Illness Emotional Illness Mental Deficiency Alcohol or Drug Addiction	Abuse Sexual Molestation Neglect Refusal to Provide for the Child	Absence, or Incidental Contacts Only	Absence, and Intent Never to Return
Time Limits:	None	1 Year of Treatment	1 Year of Absence	6 Months of Absence
Caseworker Tasks:	Diagnosis Prognosis Evidence of Incapacity	Structured Treatment Program: Documentation Written Agreements Review Hearings	Search Publish Summons	Search Publish Summons
	Termination of Parental Rights	Termination of Parental Rights	Termination of Parental Rights	Termination of Parental Rights

Figure 4.4 Potential Termination of Parental Rights

TASK	WHO DOES IT			
	Judge and/ or Court	Parent's Attorney	DA and/or Child's Atty.	Caseworker
1. Establish a Case.				X
2. Write Court Letter				X
3. Write and File a Petition			X	X (helps)
4. File Motion to Appoint a Child's Attorney.			X	X (helps)
5. File Answers to Petition and Demurrer.		X		
6. Set Hearing Date.	X			
7. Serve Summonses.	X			X (helps)
8. Publish Summonses if Whereabouts Unknown.				
8a. Prepare Affidavit for Publication.				X
8b. Prepare Motion for Publication.			X	X (helps)
8c. Prepare and Sign Order for Publication	X (signs)		X (prepares)	X (helps)
8d. Prepare Summonses to be Published.			X	X (helps
8e. Arrange for Publication in Newspaper.				X
9. Prepare Case Record				X
10. Obtain Photograph.				X
11. Obtain Other Official Records.			X	X
12. Obtain Depositions and/or Interrogatories, if Necessary.			X	X (helps)
13. Round up Witnesses.			X	X
14. Prepare Witnesses for Court.			X	X
15. Prepare Caseworker's Testimony.			X	X
16. Arrange for Witnesses to be at Hearing.				X
17. Decision on Case.	X			

Figure 4.5 Checklist of Tasks - Termination of Parental Rights

CHAPTER 5

PERMANENT PLANNING AT WORK: THE HOOVER FAMILY

By Janet Lahti and Susan Downs

The following case history describes the five-year relationship between the Hoover family, one of the project's cases, and the Children's Services Division (CSD) in Clinton County, Oregon, from the family's first contact with CSD in 1971, to the termination of the parents' rights and adoption of the children in 1975 and 1976.* The purpose of the narrative is to show, by following events in one case over a period of time, the way the project worked to achieve permanency planning goals. The history also illustrates the part played by the project worker assigned to the case. The special project workers were responsible for much of the demonstration's success. They were charged with advocating the child's need for permanency, and expedited all actions made on behalf of the family; if delays occurred, they devised ways to speed the process. At the same time they were sensitive to and supportive of the parents' desire to retain their rights to their children, and gave parents all possible service so that the children could be returned to them. The workers had to maintain a difficult balance; how long should parents be given continued chances to establish their ability to care for a child, and when does the child's need for a permanent home outweigh the needs of failing parents for continued service

The Hoover case is not presented here as a "typical" project case. (Only 36 percent of the project children were freed for adoption, and of the children who were adopted, many parents either relinquished their rights voluntarily, or did not contest the termination hearing.) Rather, this case was chosen because it exemplifies the kind of case the project found most difficult to resolve, and that required the most arduous casework service.

- The family had four children. Cases involving sibling groups tended to be more complicated. In planning for them, the strength of their attachments to each other, as well as the relationship of each child to each parent, had to be considered.

*The names of people and places in this narrative are fictitious, but the case history is taken from an actual project case, and is not a composite.

- The Hoover parents fit the "conduct" category, in the typology discussed in Chapter 3. Parents in this category required a great deal of casework service to help them overcome the multiple problems that had necessitated foster care placement, and predictions of their potential ability to function adequately were often beclouded with uncertainty. If it was finally decided that the parents could probably not make a home for the child, and if they refused to relinquish their rights voluntarily, the worker had the painstaking task of documenting all casework activity to build evidence for a court hearing. To establish a conduct case, in particular, workers had to demonstrate that all possible services were offered to the family, and that the parents repeatedly and conclusively failed to respond. A year of intense activity usually preceded the drafting of a termination of parental rights petition, and, during crisis periods, the project worker might well concentrate all his time on a single case.

- Adoption was the permanent plan eventually chosen for the Hoover children. Of the planning options available, adoption was the most complex, requiring the greatest effort over the longest period of time. Before adoption could be achieved, the rights of the parents had to be terminated, and the worker might take on much of the work of preparing the case for court. To find an elusive parent, he became a detective, tracing down all leads until the parents were located. If legal personnel were slow in writing a petition, the worker might do it himself. He became expert at serving summonses, persuading witnesses to testify, and preparing admissible court evidence. Wherever bottlenecks occurred, the worker strove to resolve or circumvent them.

The case history presented here discusses in detail the work of Mrs. Minnis, the project caseworker with the Hoover family. It is followed by a discussion of some aspects of the case.

Summary of Events

1971	July:	Children were taken into custody, made wards of the court, and placed in CSD foster homes.
	Oct.-Nov.:	Parents were out of touch with CSD for two months.
1972	Feb.-April:	Parents were in California.
	August:	Parents permanently separated. Mr. Hoover kept no more visits scheduled for him after this time, and had no further contact with his children.

	Aug.-Dec.:	CSD lost contact with Mrs. Hoover.
1973	Feb.-July:	Mrs. Hoover visited her children once a month.
	July-Dec.:	CSD lost contact with Mrs. Hoover.
	December:	Case was transferred to Project worker.
1974	Jan.-May:	Mrs. Hoover visited her children once a month.
	June:	Mrs. Hoover moved to Washington, and from there, she moved frequently but never again resided in Clinton County. She visited the children twice after this time.
	December:	Project decided to petition for termination of parental rights.
1975	July:	Petition to terminate parental rights of Mr. and Mrs. Hoover was filed.
	October:	Mrs. Hoover's parental rights were terminated.
1976	January:	Mr. Hoover's parental rights were terminated.
	November:	Court of Appeals denied Mr. Hoover's appeal.
	December:	Children were adopted.

Regular Casework Services: July, 1971 through December, 1973

Background. Clinton County, where the Hoovers lived, is a small, rural county in Western Oregon. It has no large towns, and many residents are farmers or loggers, or work in one of the lumber mills. There are twelve Children's Services caseworkers assigned there, who do protective services, adoptions, and crisis counseling as well as foster care placements. The juvenile court and CSD do not regularly cooperate in cases of mutual concern, and in the past the Circuit Court had resisted CSD's efforts to terminate parental rights in court. The county has some service agencies, but the distances between towns make it difficult to obtain professional counseling, psychiatric evaluations or treatment, or other services for multi-problem families. On the other hand, CSD workers make constructive use of informal information networks, helpful neighbors and friends, and para-professionals, in order to rehabilitate disintegrating families.

Mr. and Mrs. Hoover were 22 and 23 years old, respectively, and had been married five years, at the time their children were taken into custody. They had four children: Barbara, age 5; Philip, age 3; Sharon, age 2; and Jerry, age 2 months. Both parents had grown up in the Brownsville area, Clinton's county seat, and were living there when the children were removed from them. They had separated many times during their marriage and had frequently received public assistance. Both parents drank heavily, and were often drunk for two or three days at a time, either at home during drinking parties or in taverns. At these times, the children were usually left unsupervised.

July-December 1971. In July, 1971, the Clinton County Health Department took the four Hoover children into custody in response to a community complaint. The children had been left in the care of an 11-year-old cousin while the parents were at a tavern. The children were dirty, inadequately clothed, and had skin rashes and burns. The baby had no bottle or diapers. The condition of the house, according to the landlord, was unliveable. The garbage consisted of "unused abundant foods, beer and wine bottles, and all kinds of junk and clothing. The upstairs rugs had to be discarded because they were hopelessly soiled with paint, ketchup and syrup. All the mattresses. . . had to be taken to the dump because they were totally soiled with blood and urine. Dirty diapers were thrown all over the house and outside in the yard. They had plugged the toilets with clothing and used the whole house as a bathroom."

The children were made wards of the court, with care, custody, and supervision awarded to CSD. They were placed in foster homes, the baby with one family and the three older children with another.

Three days later, the Hoovers contacted CSD. The caseworker assigned to them explained that the community would not allow them to leave the children unsupervised for days at a time while they were away. She also clarified with the Hoovers what would need to happen for the children to be returned to their care. The parents and caseworker would cooperate so that the parents could visit the children regularly, find a suitable house, get help learning how to take care of children, and be available for visits by the caseworker. Mr. Hoover would need to try to find work with the caseworker's assistance. The Hoovers seemed to understand why the children needed to be in foster care temporarily, and agreed to undertake changes so the children could return home.

From July to November, 1971, the three older children (ages 2 to 5) were placed in five different foster homes. Their last placement stabilized into a permanent arrangement, and these foster parents eventually adopted all three children. The baby, Jerry, stayed in the same foster home in

which he was originally placed until 1976, when he was freed for adoption and moved to an adoptive home.

1972. In the spring of this year, the Hoovers moved to California for three months. In August, after their return to Brownsville, they permanently separated. They visited the children three times in 1972. After the separation, Mr. Hoover never saw the children again. Mrs. Hoover dropped out of sight until January of the following year.

1973. In February, Mrs. Hoover contacted the agency, and visited the children once a month until July. She briefly had a job and found a house. Then she started drinking heavily again, and after July, she was rarely in contact with the agency until the following January.

During this two-and-a-half year period, neither Mr. nor Mrs. Hoover made progress in establishing a home for the children. The agency had had almost no contact with Mr. Hoover. Mrs. Hoover had made intermittent efforts to get work and find housing, but her excessive drinking undermined these attempts. She had visited the children about fifteen times in the two and one half years. Only the oldest child, Barbara, who was five years old when removed from her mother, remembered her at all. Mrs. Hoover was affectionate and concerned when she was with the children, but after visits with her they all showed symptoms of anxiety -- loss of appetite, bed wetting, and stubbornness. The youngest child, Jerry, had been only two months old when placed in foster care and was now nearly three. He invariably cried and clung to his foster mother during the first half hour of every visit. Whenever he got in the car with his foster mother, he said that he hoped they weren't going to Brownsville (the location of the visits). It seemed unlikely at this point that these children could ever return home and that another permanent plan, preferably adoption, would need to be found for them.

Project Casework Services: January 1974 to October, 1975

In December, 1973, the Hoover case was transferred to Mrs. Jan Minnis, a permanent planning worker. The Hoover children met the criteria for inclusion in the project -- they were under twelve years of age, had been in foster care over a year, were considered unlikely to ever return home, and it was thought that adoptive homes could be found for them if they were freed for adoption.

Mrs. Minnis had been trained to move children quickly into permanent homes -- to provide intensive services to parents, to know when to finally decide whether or not the parent could create an adequate

home, and to help manage a termination case through the courts. She was supervised by Vic Pike, Project Director, who met with her one full day a month to help plan casework activity, devise strategies, and participate in the difficult decisions she faced. In addition, he and his assistant were always available to caseworkers by telephone. Mrs. Minnis had thirty-five permanent planning cases in her caseload during the period of time covered by this narrative, almost twice the number considered optimum for the project.

January-May, 1974. By January, 1974, CSD had lost touch with both parents, but Mrs. Minnis was able to locate them in the Brownsville area. Her first task was to write them an explicit letter, in which she explained that the children had been transferred to her because they had been in care too long, and asked the parents to consider either release of their children for adoption or a rehabilitation program, so that, separately or together, at least one parent could make a home for the children.

Mr. Hoover did not respond to this nor to subsequent letters or visits by Mrs. Minnis. He remained unwilling to release the children, but never was able to make the 20 mile trip from his home to Brownsville to see the children, nor to find work and arrange a home for them. However, his actions showed that he wished to help make decisions that affected their lives. He refused to consent to any treatment for his older son's moderately deformed hand, as he was fearful that the doctors would simply amputate it. He finally agreed to consider releasing the youngest child for adoption, with the stipulation that Jerry be adopted by his foster parents. Unfortunately, this was not possible, as the foster parents were both retired and could not be sure that they could raise a three-year-old child to maturity. Later, Mr. Hoover appealed the Circuit Court decision to terminate his parental rights. Mrs. Minnis continued to see or write letters to Mr. Hoover through 1974 and 1975, and regularly sent him calendars of scheduled visits with his children until the time of his termination hearing.

Mrs. Hoover came to the office immediately after receiving the letter. She said that she wanted the children very badly and agreed to work with Mrs. Minnis on a rehabilitation program. They agreed to start modestly -- Mrs. Hoover would get a job (she usually worked for two or three weeks at a time as a waitress, nurse's aide, or bar maid) and a small apartment, so the oldest child could visit her there. Later, she would get a driver's license so she could transport herself the fifteen miles to the office for visits, but in the meantime, Mrs. Minnis would drive her to and from the office.

The first five months of 1974 was a period of intense casework activity with Mrs. Hoover. The following categories summarize the events of this period.

- Housing - Mrs. Hoover never succeeded in establishing a permanent residence. For much of this time she lived with her sister's family in a one-bedroom apartment. Her moves were not planned. Rather she would suddenly move and the worker would begin immediately to find out where she had gone. She was usually with relatives within a 50-mile radius of Brownsville.

- Transportation - Mrs. Hoover never took steps to get her driver's license. The children, Mrs. Hoover, and the case-worker were located in four separate towns, all at least 15 miles away from each other, so much casework time was spent arranging transportation for visits with the children and for appointments with other agencies. Often Mrs. Minnis drove Mrs. Hoover to her various appointments, but Mrs. Hoover's inability to make reliable arrangements for her own transportation caused her to miss appointments with other agencies that might have helped her.

- Counseling - Mrs. Hoover expressed an interest in getting help for her personal problems, particularly her destructive drinking habits. In spite of pre-arranged transportation, Mrs. Hoover missed the three appointments made to mental health facilities in the area, causing them to refuse to give her further appointments. Mrs. Minnis twice referred Mrs. Hoover personally to parenting classes, but she never attended.

- Employment - Mrs. Hoover never found steady employment. Her jobs were short-lived, and usually ended when she went on an extended drinking spree. She did not follow through on job interviews, in spite of CSD-provided transportation. She was referred to the Division of Vocational Rehabilitation several times but kept no appointments. She finally met the DVR representative by accident in the CSD office, but his encouragement to her to come to the office did not succeed. Mrs. Hoover was reluctant to take on a job training program. When pressed, she would say that she wanted to try a new job she had heard about, and if that didn't work out, then she would get job training. So, there never arrived a time when she thought job training would be appropriate.

- Drinking - Mrs. Hoover continued her pattern of alternating periods (usually from one to three weeks) of sobriety followed by an extended drinking spree. In February she was in jail for three days on an alcohol-related offense. Her drinking undermined all rehabilitative efforts and made real progress impossible.

- Visits with children - Mrs. Hoover missed few visits with her children, although she rescheduled them frequently. She would ask to visit the children at times when she knew she could get a ride to Brownsville. Such requests were always granted, although the lack of a planned visiting schedule was disruptive to the children and foster parents, who never knew when they would be asked to come to Brownsville for a visit. The worker thought that the oldest child, Barbara, now 8, had the best chance of any of the children of ever returning home, and so arranged for her to go to her mother's residence for an overnight visit. If successful, it would have been followed by other, longer visits. Unfortunately, the visit was a fiasco with missed connections, car breakdowns, and sudden changes of plan. Reluctantly, Mrs. Minnis refused to allow Mrs. Hoover's next request for a three-day out-of-state trip with her daughter. This child was more attached to her mother than any of the children, but her behavior showed a great deal of ambivalence, and later in the year she started therapy to help resolve her feelings toward her mother. Of the older children, Philip was receiving treatment for his deformed hand, and Sharon needed absolutely consistent twice-daily medication to control grand mal epilepsy. It was thought unlikely that the mother could ever take on the medical appointments, which took place in a specialized clinic in Portland, 70 miles away, and other care necessary for these children. The youngest child seemed to have no ties with his mother, but still cried and showed fear whenever he saw her.

Casework Support. During this time, the worker visited Mrs. Hoover at least once a week at her home to assess with Mrs. Hoover the status of plans to have the children returned and offer assistance. She also arranged to see her for at least 20 minutes when Mrs. Hoover came to the office to see the children. The case record shows that she saw or talked on the phone to Mrs. Hoover about every three days during these months, and wrote letters or made phone calls on this case daily.

June to December. In June, Mrs. Hoover decided to move to Washington with her parents. She was increasingly anxious about her inability to accept services offered her, which she knew might result in the permanent loss of her children, and hoped she could straighten herself out at home with her parents. Her parents, the Knutsons, had requested that the children be placed with them, but a social evaluation obtained from the Washington CSD office indicated that the home would not be a

suitable permanent placement for the children. Mrs. Minnis strongly urged Mrs. Hoover to consider how she would build a strong relationship with her children from a distance of 200 miles. She doubted whether Mrs. Hoover on her own would seek out services in Washington, when she had been unable to accept the same services offered in Brownsville, even with strong, consistent support from her caseworker.

After she moved, Mrs. Minnis called her at least weekly for a month, to encourage her to find work, counseling, etc. When it became clear that she was not making progress, she asked the local CSD office in Washington to help Mrs. Hoover get service. With the help of this agency, Mrs. Minnis and Mrs. Hoover arranged a written contract, listing what each party would do. It was hoped that this agreement would clarify the expectations of each party, which was especially important with Mrs. Hoover so far away.

Lillian Hoover would:

- Actively seek employment, and once this was obtained she would budget money to provide adequate food, shelter, and clothing for herself, and pay child support of $5 per child per month.

- Visit the children twice a month at the CSD office and notify the caseworker one day in advance if unable to come. (Visits would be difficult, of course, since the mother was now living out-of-state and would need to make a four-hour trip to see the children. But any reunification plan must be preceded by ample contact between parents and children, especially when there had been so little regular contact for a long time. The children needed to get well acquainted with their mother to mitigate the disruption of the move from the foster home to their own home.)

- Participate in family counseling and in an alcohol rehabilitation clinic.

- Participate in medical appointments in Portland for two of her children. (CSD agreed to get the children to Portland; Mrs. Hoover was to meet them there and accompany them to the clinic.)

- Remain at one address.

- Maintain adequate housekeeping standards.

CSD would:

- Work with Mrs. Hoover in any reasonable way to regain custody of the children.

- Arrange visits with the children every two weeks.

- Help Mrs. Hoover get assistance from other agencies and arrange transportation.

In September, Mrs. Hoover entered an alcoholic rehabilitation clinic for 18 days, but left three days before her release date. From this time on, she sought no further help, and moved frequently throughout Washington and Oregon. She never again resided in Brownsville. She came twice to visit the children, but at other times she would not appear at the scheduled time at the bus depot where Mrs. Minnis was waiting to take her to the children.

By December, it was clear that a petition would be filed to terminate the Hoover's rights on all the children. The rehabilitation plan had operated for a year, with no progress made toward reuniting the family. Mrs. Hoover had been unable to meet any of the terms in the written agreement. Both parents had been asked to release voluntarily their rights to the children, but they had refused. The decision to pursue termination was made only after reviewing the details of the case carefully with a number of colleagues -- her local supervisor, Clinton County caseworkers who knew the family, and others in the legal and social service community. When those involved in the case concluded that, under the circumstances, termination of parental rights was the best plan for these children, the case was referred to David Slader, Metropolitan Public Defender.

1975. Mrs. Minnis began preparing the case for the court hearing. She had documented each step of the treatment program, including all efforts to contact the parents and to put them in touch with other agencies, and had also documented their repeated failure to respond. She found witnesses, helped them prepare their testimony, filed the termination petition drawn with the assistance of David Slader, and obtained a court date.

Filing the termination petition was delayed several times, because of the worker's inability to find Mrs. Hoover, but in March, 1975, Mrs. Minnis sent the case materials to the Public Defender's office. She hoped that a termination petition would be filed as soon as possible so the children would be settled by the time school started in the fall of 1975. But there were delays and the petition was not filed until July.

With the filing of the petition, CSD's work with the court began. For the Hoover case, this was the agency's first contact with the court on this case since the custody hearing four years before. The court had

rarely held either termination hearings or review hearings in the past, and earlier had refused to have a review hearing on the Hoover case requested by CSD.

Termination of Parental Rights

Lillian Hoover. The hearing on the petition to terminate the mother's parental rights was scheduled for October 3 and 28. Sam Hoover appeared at the October 3 hearing but did not have an attorney, even though he had been notified early in September that he would need one. His hearing was rescheduled for January, 1976.

A pro-tem judge presided since the county judge did not want to hear the case. The mother's attorney argued that she could care for her children and expressed doubt that CSD was sufficiently expert in working with her special problems. A psychologist for the defense testified that he found nothing in his examination or tests which would indicate that Mrs. Hoover could not care for the children. He testified that if she had psychological counseling, money due her from an inheritance and family support, she could care for the children.

The state (represented by an assistant district attorney) and the Public Defender representing the children argued that since no progress had been made toward reuniting this family in the four years and three months the children had been in foster care, enough time had been allowed, and the mother's parental rights should be terminated. The children's attorney emphasized that, whatever the reasons for Mrs. Hoover's inability to respond to services, the children could not wait indefinitely for her to succeed in establishing a home. By this time, they did not really consider Mrs. Hoover as their mother, and it was in the best interests of the children that they be adopted and have parents of their own.

They presented a summary of Mrs. Hoover's past behavior relevant to her ability to be a mother -- her patterns of visiting, changes of residence, efforts to control drinking, attempts to find employment, lack of attendance at parenting classes and counseling sessions, and her inability to provide for the children's physical needs. A psychologist who had evaluated both the children and the mother testified that it was his belief that Mrs. Hoover could not be an adequate mother to the children. A few days later the court decided to terminate the parental rights of Lillian Hoover to her four children.

Samuel Hoover. In January, 1976, the termination hearing for Sam Hoover was held before the juvenile court judge. The state and the children's attorney argued that the father's parental rights should be terminated since he had not made the changes necessary to permit

the return of his children. The testimony included evidence that he had rarely kept visiting appointments, was unable to find a job and pay support, and that he had made very little effort to care for the children's physical or emotional needs. Mr. Hoover's attorney argued that he had re-married, settled down, and would soon be able to care for the children.

His parental rights were terminated, but Mr. Hoover appealed the decision. In November, 1976, the Oregon Court of Appeals upheld the circuit court decision. He then appealed to the Oregon Supreme Court, which refused to review the case.

The three older Hoover children have been adopted by their foster parents. The youngest child, Jerry, had lived with his foster parents from the time he was taken into foster care at the age of 2 months until he was five years old. Since these foster parents are retired and could not adopt him, he has been adopted by new parents, with the understanding that his former foster parents can visit him as "foster grandparents."

Comment

Conduct Cases. The parental rights of the Hoovers were terminated on the basis of parental conduct. They had not completely lost contact with the children (desertion) nor did they have a diagnosable chronic illness which prevented them from caring for their children (condition), but they had a number of problems, which taken together, made them unable to function as parents. Poverty, unemployment, and alcohol abuse, especially, were so incapacitating to these parents that they could not provide a minimally sufficient level of care for their children. They moved frequently, left their children unsupervised, were unable to keep them clothed and get them medical care, and finally, were too preoccupied by their own unmet needs to follow through on efforts made to help them. The Hoovers are typical of many project cases that culminated in termination of parental rights on the basis of parental conduct. Taken separately, none of their problems would have necessitated such a drastic procedure, but the multitude of problems so overwhelmed them that they were unable to take the realistic, concrete steps necessary to assure the children's return.

Rural and Urban Counties. Clinton is a rural county. Could these parents have been helped in another county where a wider range of services were located and easily available by public transportation? The Oregon statute states that the standard of service is "all reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected" (emphasis supplied).

Such a standard may appear to discriminate against families in rural counties. But project experience has shown that it is by no means easier to attain permanent plans for foster children in large cities. The project evaluation revealed that there was no significant correlation between the proportion of a county's foster children who received permanent plans and the county's urban or rural location. It is possible that such rural barriers to permanency planning as lack of transportation and few community services, were balanced by the size and complexity of an urban program that makes decision-making more diffuse and cases more difficult to manage.

Time. It took over five years, from the time the children first entered foster care, to place them in permanent adoptive homes. During the first two-and-a-half years, caseworkers worked mainly to establish the children in good foster homes and to get help for their medical and other problems. The project worker spent 1974 in concentrated, intense, rehabilitative casework with the parents. In 1975 and 1976, the case was proceeding through the courts, from the framing of the petition through the final denial by the Oregon Supreme Court to review the case. These time ranges were typical of project cases, generally. Conduct cases took the longest to prepare, as they required a year of documented casework after the case was transferred to a permanent planning worker. In contrast, desertion and condition cases could be brought to court as soon as the evidence was ready. The appellate process in Oregon takes about eight months. Parents can speed up the process by voluntarily relinquishing their rights, or by electing not to appeal. But if the case must go through the courts, as the Hoover case did, it is not unusual for a year or two to be lost in this way.

Courts. Courts vary widely from district to district. The court in Clinton County was perhaps more resistant than many to acting on Oregon's termination statute, but it was by no means atypical. When termination petitions were filed, delays were common, and often a pro-tem judge would be appointed to hear the case. Previous experiences with the court made CSD staff cautious when they considered filing a termination petition. When CSD had a case in which termination seemed appropriate, the worker tried to obtain a voluntary relinquishment from the parent so as to circumvent the court entirely. If this was not possible, the case was scrupulously prepared, and taken to court only when compelling evidence was available. Even after the petition was written, there were often delays in getting the hearing date set, summonses issued, and witnesses prepared, and further delays were caused by continuances, postponements, and long waits between the time of hearing and the announcement of the judge's decision.

On November 11, 1975, in an interview published in the Clinton County newspaper, Mrs. Minnis accused the local court officials of delaying termination cases. Clinton County, she said, had the worst record of the 36 counties in Oregon, and habitually continued cases with the result that witnesses would be unavailable by the time the case finally came to a hearing. In a letter to the editor, the juvenile court judge and the court director denied these charges and offered data to support their position. Before the dispute ceased several articles had been written, including a letter from a foster parent supporting CSD. Thereafter, communication improved between the court and CSD. The county juvenile judge began to hear termination cases himself, instead of appointing a pro-tem judge. In conversations with David Slader, the judge indicated an interest in terminations and in becoming more acquainted with applicable case law. In assessing the situation in Clinton County, Mr. Slader said, "The obstacles to terminations existed because they hadn't been tested."

In other counties, juvenile courts worked very quickly to move a case through the court system. Informed D.A.'s and court judges, who were aware of the damage delay could do to children, could facilitate the process by holding periodic review hearings, appointing counsel for the children, drafting petitions as soon as possible, and otherwise avoiding unnecessary delay.

Casework Techniques. The services of the project worker, Jan Minnis, were typical of project casework generally. The sense of urgency in resolving cases was a quality shared by all project workers. They worked quickly to locate parents new to their caseload, and then extended every effort to keep informed of where they were and to constantly re-involve them in the casework program. The technique of making written contracts between CSD and the parents was frequently used in conduct cases. It served to clarify the expectations of both parties, and was a standard by which to measure the parent's progress or lack of it. Mrs. Minnis demonstrated the ability of all project workers to face difficult decisions and act on them. Once it became clear that a reasonably intense treatment program would not succeed, she decided, together with other professionals familiar with the case, to proceed with a termination of parental rights petition.

Like other project workers, Mrs. Minnis had the professional ability to make a genuine, extensive, commitment to parents on her caseload, and at the same time to objectively evaluate their potential to ever take full responsibility for their children. She constantly worked

to help Mrs. Hoover free herself from fantasies about the future. Mrs. Hoover would hope for a job, a home, support from her husband, an end to drunkenness, but could not bring herself to take the concrete steps necessary to make these hopes a reality. Mrs. Minnis, while sincerely sympathetic to this mother's fears that she would lose her children, and aware of the genuine love and concern Mrs. Hoover had for them, had to help Mrs. Hoover focus on the need of the children for parents who really belonged to them. For caseworkers like Mrs. Minnis, who were trained to be understanding of people in difficulty, casework of this kind was anguishing. Their ability to maintain composure and a clear sense of direction in the face of the heartbreaking despair of failing parents, was constantly challenged.

CHAPTER 6

LEGAL REPRESENTATION OF THE CHILD

By Glen Downs

65

A. Introduction

For nearly three years the Children's Services Division (CSD), as guardian of the children referred to the demonstration project, purchased the services of legal counsel for those children on whose behalf CSD sought termination of parental rights. (The phrase "termination of parental rights," hereafter appreviated to "TPR," refers to a statutory proceeding under Oregon's juvenile code to involuntarily sever the legal relation of parent and child, thus freeing the child for adoption.) The following pages describe the prerequisites to mounting a child advocacy effort on the scale of that initiated by CSD and recapitulates the results of that effort. The description will disappoint those who restrict advocacy to courtroom settings, and who believe that the outcome of a case depends entirely on the mercurial events of a trial. Of course, it cannot be denied that a TPR proceeding promises all of the elements of high drama. The scenario is a familiar one: the solemn, black-robed judge poised in the background, in whose hands rests a young child's prospects for security and affection; and in the foreground, in the arena, the child's parents are pitted against the power of the state to preserve themselves as parents; the clash of advocates; the fearsome, penetrating cross-examination; the surprise witness and the sobbing confession. . . it is all very exciting stuff. But we shall leave it out.

We pass over whatever dramatic appeal a TPR proceeding holds because, first of all, in the majority of such cases, there is no dramatic potential to exploit and to dwell on those that do provide a breathless scene or two is to distort the process. In one-third of the cases where children were freed for adoption there was no TPR hearing at all -- their parents voluntarily relinquished their parental rights. Of the remaining cases, in which there were TPR hearings, half were uncontested -- the parents failed to appear, or could not be found and so on. And in the other half, which were contested, there was such compelling evidence that there were few serious doubts about the eventual outcome.

There is a second and more important reason for not focusing on court-room events. If this experiment in child advocacy proved anything, it was that the consistent success of such a project over time depends very little on canny legal case strategy and lucky breaks. Rather, the conditions of success are the prodigious efforts inspired by myriad, disparate and sometimes obscure antecedent conditions and events. The advocacy effort stands at the confluence of its antecedents; its achievement realizes a possibility each could see but could not reach alone. Therefore, if we view this advocacy effort as demonstrating the necessary conditions of success, we will not find those conditions by reviewing its achievement. We must begin with what it inherited from its ancestors.

The point of confluence of which we speak was February 26, 1974. On that date the State of Oregon Executive Department approved a one-year agreement executed earlier that month between CSD's Administrator (on behalf of the State of Oregon) and the chairman of the Board of Trustees of Metropolitan Public Defender Services, Inc. (hereafter MPDS), an Oregon non-profit corporation based in Portland (Multnomah County), Oregon, that was best known at the time for its agressive defense of indigent defendents in state and federal criminal cases. The substance of the agreement was that MPDS would represent up to 50 children that year in all stages of TPR proceedings in 11 of 15 project counties. (Three rather remote rural Eastern Oregon counties and one county in the southwest part of the state were excluded the first year.) A child was to be referred to MPDS only upon CSD's determination that a TPR proceeding on his behalf was both appropriate and feasible. CSD (i.e., the demonstration project) was obliged to investigate each case prior to referral and to investigate further after referral if necessary to prepare a case for a hearing. And the agreement was careful to provide that MPDS was to "[r]epresent the individual child only and no other party or government agency." That provision in one form or another also appeared in all subsequent CSD/MPDS agreements.

Thus the experiment which called itself the Child Advocacy Project (hereafter CAP) was launched. David L. Slader was employed as the CAP attorney and was to remain with the project throughout. A full-time paralegal person and law students were also employed as assistants.

CSD and MPDS renewed the substance of the first-year agreement in the two succeeding years though particular provisions were modified. The second year contract increased to 100 the maximum number of children MPDS would represent in that year and added the four project counties omitted in the first-year contract. The contract for the third year provided that MPDS would continue with those cases it accepted during the first two years and that, in addition, it (i.e., David Slader) would write a legal handbook or manual for attorneys representing children.

The first child was referred to CAP on March 6, 1974, barely a week after it officially began. By the first of July the CAP caseload had reached its 50 child maximum with referrals from 11 of the 15 project counties. The number of referred children reached 100 by the end of the first year. Later we will summarize the results in those cases and in the ones that came the year after.

We must first turn to other matters.

B. Antecedent Conditions and Events

There are about six principal historical events upon which CAP was founded and from which it derived its momentum and direction. Some of the contributions of each are discussed below in no deliberate order of priority.

1. The Transfer of Juvenile Jurisdiction to the Oregon Circuit Courts.

The statutory proceeding most frequently used in Oregon to involuntarily terminate parental rights is that prescribed in ORS (Oregon Revised Statutes) Chapter 419, which contains the Oregon juvenile code. Therefore, most TPR proceedings in Oregon are juvenile cases and are heard in the court with jurisdiction over juvenile matters.

Prior to July 1, 1968, there were several kinds of courts in the state that could exercise jurisdiction in juvenile cases, including TPR proceedings. They included the county courts, municipal courts, and justices of the peace (justice courts) which dominate the judicial system in rural areas of the state. Many of them administer a kind of frontier justice and none are courts of record -- meaning there is no record or transcript of what happens at hearings. And as often as not the judge presiding in those courts has had no formal legal education.

Effective July 1, 1968, the jurisdiction over juvenile matters in most of these state inferior courts was transferred by statute to the county circuit courts, the state's highest level trial courts of general jurisdiction. The transfer took effect in all project counties. It was an important development in two respects.

It was important, first of all, because many of CAP's cases arose in the rural and semi-rural counties of the state where TPR proceedings were not particularly welcome. We cannot know what the outcomes of the hearings would have been had that attitude combined with the broad discretion and home-spun procedure of a local rural court. The prospects, however, would not be bright. Fortunately those CAP cases that went to hearings were decided by qualified judicial officers on a record of the case that was reviewable on appeal.

A second point somewhat related to the first concerns appeals. The nature of a contested TPR proceeding encourages appeals, and a significant number are appealed. In TPR cases decided by circuit courts there is, in practice, only one step in the appellate process: the appeal is taken to the Oregon Court of Appeals and the case is reviewed "de novo on the record," meaning the court reviews all the testimony and exhibits and makes a new decision. Appeals from courts that are not courts of record are a different matter. First the appeal is taken to the circuit court where the case is heard de novo, meaning there is a second complete hearing (because there is no record of the first one) which requires all the witnesses to reappear and testify again and all the evidence to be resubmitted. Then there would still be the opportunity to appeal the circuit court decision to the state appellate court.

Such a two-tiered appellate process is weighted heavily against the party with the burden of proof, which would be the state or the child in a TPR case. That bias, together with the prospect of further delay and additional expense implied in that process, was eliminated in 1968.

2. Amendment of the TPR Statute in 1973. In the early months of the 1973 Oregon legislative session, Victor Pike instigated extensive amendments to ORS 419.523, the TPR provision in the Oregon juvenile code. The amendments reflect Pike's considerable experience with TPR proceedings and were intended to correct deficiencies in both the substantive law and the juvenile court system that administers it.

The TPR statute as amended in 1973 is set out in its entirety in Box 6.1. We present the amended statute here exactly as it appeared in the 1973 Session Laws because that format shows precisely the changes that were adopted; i.e., the material within brackets was deleted from the earlier statute and the provisions in bold print were added. The statute as amended went into effect on October 5, 1973, less than a month before the demonstration project officially began.

Box 6.1 Here

The statutory amendments had a profound impact on TPR adjudications in the state's circuit courts. (Hereafter we refer to circuit courts exercising jurisdiction in juvenile matters as "juvenile courts," though the phrase is somewhat misleading. There are no "juvenile courts" as such in the project counties; rather, there are juvenile departments of the circuit courts in which a circuit court judge acts as the presiding officer). One principal problem with the earlier

Box 6.1 Revised Oregon Termination of Parental Rights Statute

CHAPTER 804

AN ACT

[HB 2797]

Relating to termination of parental rights; amending ORS 419.523.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 419.523 is amended to read:

419.523. (1) The parental rights of the parents of a child within the jurisdiction of the juvenile court as provided in subsection (1) of ORS 419.476 may be terminated as provided in this section and ORS 419.525. The rights of one parent may be terminated without affecting the rights of the other parent.

(2) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents [:]

[*(a)*] are unfit by reason of conduct or condition seriously detrimental to the child [*; or*]

[*(b) Have wilfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year. In determining whether the parent has wilfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child, the court may disregard incidental visitations, communications and contributions.*] and integration of the child into the home of the parent or parents is improbable in the forseeable future due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

(a) Emotional illness, mental illness or mental deficiency of the parent of such duration as to render it impossible to care for the child for extended periods of time.

(b) Conduct toward any child of an abusive, cruel or sexual nature.

(c) Addictive use of intoxicating liquors or narcotic or dangerous drugs.

(d) Physical neglect of the child.

(e) Lack of effort of the parent to adjust his circumstances, conduct, or conditions to make the return of the child possible or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.

(3) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents have failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child for one year prior to the filing of a petition. In determining such failure or neglect, the court shall consider but is not limited to one or more of the following:

(a) Failure to provide care or pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others.

(b) Failure to maintain regular visitation or other contact with the child which was designed and implemented in a plan to reunite the child with the parent.

(c) Failure to contact or communicate with the child or with the custodian of the child. In making this determination, the court may disregard incidental visitations, communications or contributions.

(4) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents have abandoned the child or the child was left under circumstances such that the identity of the parent or parents of the child was unknown and could not be ascertained, despite diligent searching, and the parent or parents have not come forward to claim the child within six months following the finding of the child.

Approved by the Governor July 22, 1973.
Filed in the office of Secretary of State July 26, 1973.

Provisions added in 1973.

statute was that its provisions were too vague to impart any standards or predictability to the adjudicative process. Though it is true that the pre-1973 statute survived a constitutional void-for-vagueness challenge in 1971, it is equally true that those pressing for revision of that statute in 1973 were seeking remedies for the evils inherent in an equivocal and therefore troublesome law. Witnesses at the 1973 legislative hearings pointed out that juvenile court judges were reluctant to terminate parental rights because of the frequency of reversals when such cases were appealed. Support for that testimony is supplied by review of 15 appellate decisions in TPR cases reported from 1961 through 1973. Only seven TPR orders were affirmed on appeal, while seven were reversed, and one was modified and remanded for a new hearing. The state of affairs in the judicial system under the old statute was succinctly summarized in testimony by The Honorable Jean Lewis, a highly regarded juvenile court judge in Multnomah County, who testified in support of the 1973 amendments:

> ". . . [E]xisting law provides that a court may terminate [parental rights] if it finds the parents are unfit by reason of conduct or conditions seriously detrimental to the child. When we hear these cases in court, we are never sure what this language means.
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> Appellate courts have said that the present language of the law is too broad and there is also the question of constitutionality, and it leaves the public uncertain as to the conduct it prohibits; further, it leaves judges free to decide without any legally fixed standards of what is prohibited and what is not."

An examination of the 1973 amendments set out in Box 6.1 shows that they address the criticisms of the earlier statute made in the legislative hearings. And an examination of the subsequent reported appellate decisions shows that the amendments had the impact (at least in appeals) they were intended to have. In 28 cases reported since 1974, there has only been one reversal of a TPR order granted by a juvenile court. In 24 cases the TPR order was affirmed on appeal and in two cases the juvenile court order denying TPR was reversed. (In the remaining case, the order denying TPR was affirmed.) The profile for all TPR appellate decisions holds true for the seven CAP cases that were appealed. In five of the seven cases a TPR order was affirmed on appeal; in one case a juvenile court order denying TPR was reversed, and in one case an order denying TPR was affirmed. There were no instances where an order granting TPR was reversed on appeal.

The amended statute also had a profound impact on the kind of social casework each demonstration project case received, whether or not it was later referred to CAP. The amended statute refers to such things

as "reasonable efforts by available social agencies " (Section 1(2)(e)), "plan to reunite the child with his parent" (Section 1(3)(b)), and "diligent searching: (Section 1(4)), as activities necessary to establish a termination of parental rights case. Yet, it has been documented during the course of this demonstration that when the project workers initiated such efforts, ostensibly to meet the statutory requirements for termination of parental rights, a surprising number of presumed absent or inadequate parents were found or rehabilitated, and their children returned home.

With respect to adoptable children who could not be returned home, the amended statute is a fairly clear guide as to what must be investigated and what the investigation must show to obtain a TPR order. In the division of responsibilities worked out between CSD and MPDS, project workers were required to "investigate all cases prior to referral" to CAP. Thus the caseworkers took on the functions of legal investigators; they would (or would not) locate the lay and expert witnesses, the documents, and other evidence essential to a TPR proceeding on those grounds. Then, upon completion of the investigation, the case would be referred to CAP if the investigation showed a TPR order was obtainable under the statutory criteria.

The Child Advocacy Project lost only one contested case in three years. The impact of the amended TPR statute on juvenile courts and on the quality of social casework helps explain that astonishing record.

3. The Opportunity to Serve: "Counsel for the Child" as Entree to the TPR Process. The initial project application describes several barriers to TPR proceedings that emerged from an informal survey in 1971 of the state's more populated counties. Two survey conclusions are relevant here. The first is that while CSD caseworkers might document instances where TPR should be sought, they are powerless to unilaterally initiate a TPR proceeding. Rather, that decision depends in part on the concurrence of juvenile court personnel and depends ultimately on whether the state's chief legal officer in the county agrees to prosecute the case. That principal legal officer is the county district attorney, which leads to the second survey conclusion: ". . . the greatest obstacle found was the 'bottleneck' at the district attorney's office."

Actually, the district attorneys' reluctance to prosecute TPR proceedings was (and is) a highly visible instance of a more profound fault endemic to the largely discretionary, civil side of the juvenile court system. There are many within that system who are empowered to commence a TPR proceeding. However, none of them is required to do so and most would prefer not to, and their non-performance is obscured by the closed system in which they are employed.

The hiatus between the power and the duty widens once a TPR petition is actually filed. The juvenile code assiduously avoids terminology that implies its proceedings are in any way adversary. Therefore, though it expressly provides that district attorneys and the state Attorney General may appear in TPR proceedings, they are only to "assist the court." The CAP attorney, David Slader, describes the snarl that results:

> "Under the statutes [district attorneys] are there in juvenile court to assist the court at the request of the court. They don't have a client, as such; yet, traditionally they have represented the juvenile department. The juvenile department is an employee of the judge -- they're going to be representing the judge? That doesn't make any sense. In many places they say, well, we're representing state agencies, therefore CSD, who is usually the petitioner. That's all fine and good, except under the statute CSD can only have one lawyer, and that's the Attorney General. The Attorney General would have standing in a termination case as CSD's lawyer, except that CSD is not a party. The Attorney General also has standing in a termination case under a specific statute in the juvenile code [which gives him] the same status as the district attorney, that is to assist the court at the request of the court. It's an absolute mess."

The "mess" described by Slader and the underlying quagmire of discretionary non-action were important barriers for the project to overcome. The solution was relatively simple. Five years earlier the Oregon Supreme Court had held that a TPR proceeding was a tri-partite proceeding to which the state, the parents of the child, and the child himself were parties. And it was recalled that CSD is the statutory guardian of all the foster children committed to its custody and care by order of a juvenile court. The result was that CSD discovered the power and the duty to provide independent counsel for its wards who were parties to TPR proceedings, and found that it was even authorized as guardian to initiate such proceedings on behalf of its wards. Perhaps the court barriers were not overcome, but they were effectively countered and the status of "counsel for the child" was CAP's entree to conducting TPR proceedings.

(We must note here that in State ex rel. Juvenile Department v. Wade, 19 Or App 314, 527 P2d. 753 (1974), CAP was instrumental in establishing in Oregon additional grounds for a child's right to independent counsel in TPR proceedings. However, much of what the Wade decision established was later overruled. The case is discussed later in the section on CAP law reform cases.)

4. The Demonstration Project "Pre-test": The Pike CSD Unit/Betsy Preston Welch Combination in Multnomah County. From 1966 to 1973, Vic Pike was employed as a casework supervisor in Multnomah County's public child welfare services program. He supervised a unit of six caseworkers whose caseloads consisted entirely of children in foster care. By the end of 1968, he had become convinced that termination of parental rights and adoption was the most appropriate plan for many of his unit's foster children who would otherwise linger for years in long-term foster care. He selected one caseworker in his unit to handle such cases exclusively, and to ready those cases for TPR proceedings. It was at that point, in 1969, that Vic Pike crossed the path of Betsy Preston Welch.

Betsy Welch joined the Multnomah County District Attorney's office in 1969 as a deputy district attorney. She and Pike soon established a schedule of weekly meetings to discuss prospective TPR cases in the Pike unit caseload, and established the division of the effort required to select, investigate and prosecute those cases in which TPR and adoption was the best course for the child. As a consequence of this cooperative effort, there were approximately 150 children freed for adoption in Multnomah County alone between 1970 and 1973.

As for Betsy Welch: From 1970 to 1973 when TPR proceedings were controlled by the earlier statute, six of the 10 reported appellate cases came from Multnomah County. Of the 27 reported appellate cases decided since 1973, 14 originated in either Multnomah or Clackamas County where Ms. Welch was deputy district attorney. Thus, prior to and in tandem with CAP, troublesome procedural and substantive issues in TPR proceedings were hammered out on appeals, and the resulting body of case law proved a valuable guide in the project cases that followed.

5. The "Institutional Attorney": Metropolitan Public Defender Services, Inc. The phrase "institutional attorney" is not meant to imply that MPDS represented CSD. On the contrary, MPDS insisted from the start that under its agreement it "represent each individual child referred and no other party or government organization," and MPDS followed a literal interpretation of that provision throughout the project. Its independent representation of each child came to mean that once the child was referred to and accepted by CAP, CAP would exercise an attorney's prerogative to do what was best for his client --without interference by CSD, with or without the cooperation of the non-judicial juvenile court personnel, and without regard to collateral political repercussions or publicity which often inhibit public agencies.

We mean by "institutional attorney" that legal representation is provided through an organization rather than by a sole private practitioner. CSD had always intended that legal representation for children be organization-based and initially proposed that the organization be CSD itself. That idea was vetoed by the Oregon Attorney General in June, 1973, who stated that CSD could not "hire" an attorney but could "purchase the services" of one. As the CSD Administrator set about to "purchase the services" of an attorney who would not be employed by CSD, the magnitude of the unknowns quickly narrowed the field of candidates. It was impossible to anticipate the number of children who would need legal services, which made it impossible to estimate with any accuracy the collective time their cases would require. Yet the attorney would have to agree to work virtually full-time and to represent children in any of the project counties. He would also have to agree to rather complicated statistical reporting and record-keeping requirements attached to federal contracts. Such considerations steered the selection process away from sole practitioners and private law firms (assuming they would be interested anyway in a relative low, "blind" annual retainer to do open-ended legal work in cooperation with public social service agencies) and toward publicly financed legal organizations. Federally financed legal aid organizations and most county public defender programs were eliminated by their being more or less restricted to work within their respective counties. Therefore, pre-eminent among the survivors of the elimination process was MPDS.

MPDS had the authority to agree to provide the legal services sought, for it had had the foresight in 1971 to become organized as a state corporation. Unlike county public defender programs, it was not an agency of local government confined by the county line but was an autonomous corporation with contracting status. And there was no doubt MPDS had the ability to deliver legal service. Employing 20 attorneys and a full complement of clerical, investigative and paralegal staff, it appeared in approximately 1600 felony cases and 1200 misdemeanor cases each year in Multnomah County state courts alone. In addition, it annually contracts to represent indigent respondents in civil commitment proceedings and to represent indigent parties in juvenile court delinquency and dependency proceedings brought in an adjacent county. All of MPDS's legal services are performed under public contracts, so it was familiar with the special reporting and accounting requirements such contracts entail. And the sum of those contracts amount to approximately $1,000,000 a year.

MPDS made several important contributions to CAP and to the larger demonstration project, quite aside from the fact that without MPDS sponsorship CAP might not have come into existence. Perhaps the greatest single contribution was that MPDS's stature and philosophy

of legal service preserved the integrity of independent legal service for the project children. There were times during the project when CSD would attempt to assert administrative control over the CAP attorney in order to restrict his prerogatives in individual cases. The reasons for these attempts varied, but are partly explained by a misunderstanding of his function. They were never successful, but it would have been difficult for one in the position of an agency employee to resist them.

6. CSD's Endorsement of the Demonstration Project Design. CSD is the agency in Oregon that manages the largest foster care program in the state. Without its support there would have been no demonstration project and no Child Advocacy Project. Nor was its support passive - it gave its money, its staff, and its facilities. It should also be noted that the project children could be counted as failures in CSD's foster care program. Any success claimed for any part of the demonstration project may be attributed to CSD's willingness to acknowledge its need to continue to improve its services, so that prolonged foster care placements could be avoided. That, we suggest, is a rare event among public agencies that monopolize a social service. Yet, that acknowledgement was implicit in CSD's endorsement of the demonstration project and was an indispensable condition to the project's success.

That is not to say that CSD never wavered or that it had no misgivings. We only say that, notwithstanding, it delivered.

In this section we have tried to set out some of the antecedents and necessary conditions for legal advocacy on behalf of children in TPR proceedings. We believe the conditions and events discussed in this section best explain how CAP, as a project, was able to consistently succeed over time in freeing children for adoption through TPR proceedings. However, there is a limit to how far you can go with "necessary conditions." We suggest that TPR efforts cannot be consistently successful unless at least most of the necessary conditions to that effort are in place. They account for CAP's potential for success; but it was no mean feat for CAP to realize that potential, and the means to that end in individual cases is the practice of law and not the inexorable march of historical events.

The person best prepared to describe the process of representing individual project children is David Slader, the CAP attorney. Fortunately, that process together with a detailed account of applicable substantive law and procedure will be published in a separate volume written by him. Rather than attempt some kind of summary of that volume, we shall press on to recapitulate the results in the CAP cases.

C. The Cases

CAP represented children in two distinct kinds of cases. The first kind, which are the most numerous, were those in which the primary purpose was to free children for adoption. We shall call these "project cases," and we shall discuss them first. The second kind were those in which CAP's objective was not primarily TPR, but a change in the law or a judicial expansion of children's rights. For lack of a better term, we will call cases in this latter category "law reform cases, " and we will present them in a separate section.

1. Project Cases. The primary unit of analysis in this discussion is the "project case." "Case" is not the same as "child." "Case" refers both to a single child and to a group of siblings referred to CAP who, for legal purposes, were treated as one unit rather than as separate individuals. An analysis of the TPR grounds against the parents of all children in a sibling group showed that the grounds were the same with respect to each child in the group; i.e., if with respect to one child the grounds were abandonment or desertion against the father, and condition or conduct against the mother, those would be the grounds for TPR with respect to the other children in that sibling group. Therefore, evidence, say, of the mother's conduct admissible on behalf of one of the children would be admissible on behalf of the others, and the children become represented as a group for TPR purposes rather than as separate individuals.

Reports supplied by CAP show that 70 cases (132 children) were referred to the Project in 1974 and 1975, the two years during which cases could be referred. From that total we subtracted 15 cases (26 children) because they were either being "handled in the county" (typically this meant that the cases were referred from either Multnomah or Clackamas County where Betsy Welch was deputy district attorney), or because MPDS had represented one or both of the parents in an earlier criminal action and had to withdraw as a matter of professional ethics. That left an active CAP caseload over the two years of 63 cases (106 children). Table 6.1 shows the TPR grounds (using the combined parent typology explained earlier in this volume) for these active CAP cases and for the children in those cases.

Table 6.1 Here

The data on these project cases are best presented in tables. Rather than set out a narrative description of each table, we shall point out in a general way what each table represents and clarify some of the data.

TABLE 6.1

Total Cases and Children Represented Under CSD/MPDS Contracts 3 Years (1974 through 1976) Frequency of Combined Parent Type

Cases

(n=63)*

MOTHER	Father: Abandonment Desertion	Father: Condition Conduct	Father: Dead or Missing
Abandonment Desertion	18	4	
Condition Conduct	22	8	2
Dead or Missing	2		2

*The figure excludes 5 cases where parental type is not the same for all siblings within a sibling group.

Children

(n=106)

MOTHER	Father: Abandonment Desertion	Father: Condition Conduct	Father: Dead or Missing
Abandonment Desertion	27	6	
Condition Conduct	41	18	8
Dead or Missing	3		3

Table 6.1 is a snapshot of CAP cases and children showing the frequency and combinations of TPR grounds against the parents. As in non-CAP cases, the most frequent grounds against fathers are abandonment or desertion (parental absence), while the grounds against mothers are split between abandonment/desertion and conduct/condition. Thus, we are not dealing with intact, two-parent families. In about one-third of the cases both parents are gone (literally or figuratively) and in an additional one-third of them the father is gone.

Table 6.1 also demonstrates the consistency of TPR grounds against parents within sibling groups, thus supporting the notion that the individual children are consolidated into a single case for TPR purposes. Of the 63 sibling groups referred to CAP, in only 5 was there any variation of combined parental type among the siblings. (Usually the variation occurred with respect to a sibling with a different surname, indicating that there were two fathers involved and that the grounds against each was different.)

Table 6.2 shows the frequency with which the different TPR grounds against fathers and mothers combined resulted in TPR or some other outcome. There are no real surprises; the numbers are higher in those categories that have most of the cases.

Table 6.2 Here

Table 6.3 is a blow-up of the "children n=106" column in Table 6.2, showing more specifically what happened to the CAP children who were or were not freed for adoption. As expected, a sizable number (67) were either adopted or headed for adoption ("Plan in Progress") when the data were collected. But one would also expect that number to be higher, especially when one of the principal criteria for referring a child to CAP was that termination of parental rights is necessary to effectuate a permanent plan for the child.

The key to any substantial increase in the number of adopted or adoptable children is in the "Non-TPR Outcome" column. First, 9 children were returned to their parents, implying that a further screening took place upon their referral to CAP, and it was discovered that a satisfactory parent had appeared, or that TPR could not be obtained and the child's return to marginal parents was the best alternative. Second, 19 children were listed as "long-term foster care" and "plan not successful." In these categories are the children who could be freed for adoption but for whom the prospect of adoption was remote. It was the project's policy from the start not to seek TPR on behalf of such children, for their resulting status would be the ultimate limbo - their parent would be the state.

TABLE 6.2

Total Cases and Children Represented Under CSD/MPDS Contracts 3 Years (1974 through 1976)[1]

Combined Parent Type in Termination/Non-Termination Outcome

		Cases n = 63		Children n = 106	
Mother Type	Father Type	TPR Outcome	Non-TPR Outcome	TPR[2] Outcome	Non-TPR Outcome
Aband/Desertion	Aband/Desertion	13	6	15	12
Aband/Desertion	Condition/Conduct	4		6	
Aband/Desertion	Dead/Missing				
Condition/Conduct	Aband/Desertion	15	7	27	14
Condition/Conduct	Condition/Conduct	5	4	10	8
Condition/Conduct	Dead/Missing	1	2	2	6
Dead/Missing	Aband/Desertion	2		3	
Dead/Missing	Condition/Conduct				
Dead/Missing	Dead/Missing	2		3	

[1] Includes court ordered termination of parental rights and pre-hearing voluntary relinquishment of parental rights.

[2] The total of the two case columns (61) is lower than the total number of MPDS cases handled during the project (63) because, first, we excluded from this figure 5 cases involving sibling groups in which the combined parent type was not identical for all siblings in the group; and second, we counted a sibling group as two cases if the outcome differed within the group. There were three such cases in which the outcome differed within a sibling group and which therefore appear as 6 cases in the figure.

TABLE 6.3

Total Children Represented Under CSD/MPDS
Contracts 3 Years (1974 through 1976)

By Disposition Following Termination/Non-Termination Outcome[1]

	TPR Outcome	Non-TPR Outcome
Long-Term Foster Care	4	10
Return to Parents	2	9
Adoptive Home	38	
Placed with Relatives	3	
Plan in Progress[2]	17	12
No Success	2	9
Total	66	40

[1] Termination includes court-ordered termination of parental rights and voluntary relinquishment of parental rights.

[2] In all cases, the "plan in progress" is adoption.

Tables 6.4 and 6.5 (by case and by child, respectively) show whether a TPR hearing preceded the TPR or non-TPR outcomes, and if so whether the hearing was contested or non-contested. It is here that CAP's remarkable record in TPR hearings appears. The tables show that in 18 contested cases (involving 28 children), in only one did CAP fail to obtain a TPR order. (In that case, TPR was denied by the juvenile court, and the denial was upheld when CAP appealed on behalf of the children.) The outcomes include the results in the seven CAP cases that were appealed to the Oregon Court of Appeals. In addition to the one TPR denial just noted, there were 5 cases in which a juvenile court TPR order was affirmed on appeal, and one case in which CAP appealed a juvenile court's denial of a TPR order and succeeded in having that denial reversed on appeal.

Two other things should be noted about Tables 6.4 and 6.5. First, they show the relatively high proportion of TPR cases referred to CAP in which there was either no hearing at all or the hearing was non-contested. The hearing profile resembles that in other fields of civil litigation, where a high percentage of the cases that could result in trials are either "settled" prior to trial (no hearing) or disposed of as defaults (failure to appear at the trial) on a quick, prima facie showing that the appearing party is entitled to relief. Second, these tables do not show the number of "review hearings" at which CAP appeared and therefore underrepresent the total number of hearings per se in CAP cases. "Review hearings" are informal juvenile court proceedings during which the juvenile court judge is brought up to date on the status of his ward, the project child. These hearings were frequently employed in counties where it was suspected the court was not sympathetic to TPR proceedings. Review hearings were thus a preview of the evidence and an indication of the court's disposition toward a TPR proceeding. Therefore, one should not infer from the tables that the numbers there represent the extent of CAP's court hearing preparation.

Tables 6.4 and 6.5 Here

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2. Law Reform Cases. The CSD/MPDS agreements contained no express provision for CAP law reform cases. However, the contract terms did provide that MPDS would "[r]epresent the individual child only and no other party or government agency." The law reform cases were, in part, a consequence of the prerogatives claimed by MPDS on the strength of that contract provision. And, in part, they were filed simply because the opportunity to litigate the issues arose in the course of CAP's work.

There were four law reform cases. They are described below under headings that identify the law reform issues.

TABLE 6.4

Total Cases Represented Under CSD/MPDS
Contracts 3 Years (1974 through 1976)

Hearing Type of Case Resulting in Termination/
Non-Termination Outcome[1]

	Contested Hearing	Non-Contested Hearing	No Hearing	Total
TPR Outcome	17	14	16	47
Non-TPR Outcome	1	1	17	19
Case not Decided	1			1
Total	19	15	33	67[2]

[1] Termination includes court-ordered termination of parental rights and voluntary relinquishment of parental rights.

[2] The reason the case total here (67) is higher than the total number of MPDS cases handled during the project (63) is that, for the purpose of this figure, we counted a sibling group as two cases if the hearing type for any one of the children was different from the hearing type for the others. There were 4 instances in which the hearing type differed within a sibling group.

TABLE 6.5

Total Children Represented Under CSD/MPDS Contracts 3 Years (1974 through 1976)

Hearing Type of Child Resulting in Termination/ Non-Termination Outcomes[1]

	Contested Hearing	Non-Contested Hearing	No Hearing	Total
TPR Outcome	28	17	22	67
Non-TPR Outcome	3	2	30	35
Case not decided	4			4
Total	35	19	52	106

[1]Termination includes court-ordered termination of parental rights and voluntary relinquishment of parental rights.

- The Child's Right to Independent Counsel in TPR Proceedings.

Two of the law reform cases litigated this issue. Together they record the meteoric rise and fall in Oregon of a child's right to independent counsel in TPR proceedings.

The first case, the ascent to the zenith, was State ex rel. Juvenile Department v. Wade, 19 Or App 314, 527 P2d 753 (1974). The key to the Wade decision is in some procedural issues which, unfortunately, we have to summarize.

Wade was a TPR proceeding brought in the Multnomah County juvenile court. (We note the county because Betsy Welch, to whom we referred earlier, appeared in this case and her appearance helped frame the issue.) Prior to the TPR hearing, counsel for the parents moved for the court's appointment of independent counsel for the children, pointing out that (1) there are three parties to a TPR proceeding -- the state, the parents and the child -- each with separate interests that are affected by the proceeding; (2) as attorney for the parents he could not protect the interests of the children in the event they conflicted with the interests of his clients; and (3) that the same prospect for conflicting interests was inherent in the district attorney's representing the state. The motion was opposed by the district attorney, claiming that the interests of the children were identical with the interests of the state and that therefore both parties could be properly represented by her.

The motion to appoint independent counsel for the children was denied by the juvenile court. A TPR order was entered at the subsequent TPR hearing. The parents appealed to the Oregon Court of Appeals, and one of their assignments of error was the juvenile court's refusal to appoint independent counsel for the children. Meanwhile, the children had been referred to CAP and the CAP attorney undertook to represent the children on the appeal. That move was also opposed by the district attorney on the same grounds that she opposed the motion in juvenile court.

Two important legal issues were decided in this case. The first deals with the issue of court appointed counsel. The juvenile court's denial of the motion to appoint independent counsel for the children was reversed. In the language of the Court of Appeals:

> "We find that in all termination proceedings there are potential conflicts between the interests of the children and those of both the state and the parents, and thus hold that independent counsel must represent the children in all termination proceedings."

The second issue concerns CSD's providing independent counsel for the children who are its wards. That issue was decided by the Court of Appeals in disposing of the district attorney's objections to the appearance on appeal of the CAP attorney. The decision on that issue is buried in a footnote in the case. It is as follows:

> "We find that the Children's Services Division has the authority and duty. . . to provide children in its custody with legal representation and thus was within its authority in contracting with the Child Advocacy Project (sic) for such representation in termination-of-parental-rights proceedings and in retaining counsel for this appeal." [emphasis supplied]

The second law reform case in this area is F. and F. v. C, 24 Or App 601, 547 P2d 175 (1976). CAP appeared as amicus curiae on the appeal. Without going into the details of the case (it was a complex, hard-fought independent adoption proceeding) and without trying to analyze the decision on appeal (which is as perplexing in matters of law as the trial was on matters of fact), F. and F. v. C overruled the court-appointed counsel rule established in Wade. It is silent on the CSD-provided counsel rule established in Wade.

Thus, the net effect of CAP's efforts in the two cases just described was to establish, almost inadvertently, that CSD has the duty and the authority to provide independent legal counsel for its foster children who become involved in TPR proceedings. It remains to be seen how that duty will be enforced.

- Civil Liability for "Parental Desertion"

This case (we do not have the caption) is reported here permaturely. We include it not as a CAP accomplishment, but as an acknowledgement of a CAP effort.

In Oregon there is no theory of parental civil liability for a wrong called "parental desertion." In fact, so far as we know, such a theory of civil liability is not recognized anywhere. Yet, "parental desertion" was the theory of liability alleged in a civil action initiated by CAP against the parents of approximately half-a-dozen Klamath Indian children in Klamath County.

This case is an effort to consolidate about three distinct kinds of civil wrongs (called "torts") and thus create a new tort called "parental desertion." The theory is that when parents abandon or desert their children, they (1) violate an Oregon statutory duty to support their children; (2) commit the tort of alientation of affections; and (3) the conduct constitutes an intentional infliction of mental or emotional distress or injury.

The attorneys for the defendant parents in this action demurred to the complaint -- which is, in effect, a maneuver to have the case dismissed on the grounds that there is no legal basis for the relief the plaintiff children seek. The demurrer was sustained by the circuit court in Klamath County (i.e., the case was ordered "dismissed") and that ruling has been appealed by CAP to the Oregon Supreme Court. As of this writing, briefs in the case have been filed and the appeal is pending.

- Right to Treatment

CAP appeared as co-counsel in a Multnomah County juvenile court proceeding in which the principal issue was the court's power to order out-of-state treatment for a child, even though CSD's budget for such treatment had been depleted. In short, there was the opportunity to establish in Oregon whether the concept of "right to treatment" extended to children in CSD's care and custody.

That potential was not realized. The Court of Appeals decision in the matter is State ex rel. Juvenile Department v. L., 24 Or App 257 (1976), and provides something of a Pyrrhic victory for both the juvenile court and CSD. The Court of Appeals held, in effect, that a juvenile court judge does have the power to order CSD to provide treatment for a child, but that CSD is not obliged to provide such treatment if its line-

item budget for such treatment is depleted, and that the juvenile court may thereupon "terminate CSD's custody of the child." The court did not continue on to say what the juvenile court is then supposed to do with such a child.

D. Conclusion

CAP demonstrated two important requirements for legal work to free children for permanent placement. First, there must be in place an intact system in which the advocate can work. The several parts of that system are described generally in the first part of this chapter. And second, the effort must have the support of the social agency (or agencies) from which the advocate obtains his clients and through which the actual placements are made. Though the advocate and the larger social service system should be separate, they must be inter-dependent. The degree to which they are able to accommodate that inter-dependence will largely determine the extent to which their separate efforts will succeed.

CHAPTER 7

COSTS AND SAVINGS

By Alec McKay 89

How much did the project cost and how much did it save? This chapter details the project's expenses, and compares them to an estimate of what would have been spent had the children served by the project simply remained in foster care.

Summary of Costs and Expenses

The three-year project cost about $800,000. Of this, the federal grant paid $500,000 for project staff salaries, equipment, supplies, and contracted services (legal, research, medical). The state contributed $300,000, two-thirds of which was in the form of salaries for caseworkers. Project costs included approximately $125,000 for research and evaluation. The caseworker segment was completed by the end of the second year, and consequently the state contribution dropped from a high of $150,000 to $17,000 for the third year. See Table 7.1.

The cost analysis estimates that foster care payments saved by project action totaled over $1,000,000, of which the state contribution (41 percent) would have been nearly $444,000. See Figure 7.1.

To determine savings made possible by the project, an estimate was made of what it would have cost for project children to remain in foster care. As long as a child remained in foster care, the state made a monthly payment for his keep, but if he returned home or was adopted, the maintenance payment ended. Noting when a child was removed from care and entered into a permanent arrangement, savings estimates were made by projecting how much the payments might have been for an additional 12-23 months.

During its third year, the project cost about $211,000, whereas the cost of maintaining project children in foster care for an additional 12-23 months would have cost approximately $277,500. See Figure 7.2. The cumulative savings from decreased foster care payments overtook the cumulative expenses of running the project in January, 1977.

That is to say, the savings made by removing children from foster care and placing them in permanent homes about equaled the expenses of starting up the project during its first two years. See Figure 7.3.

TABLE 7.1

Permanent Planning Project Costs: Summary

	Year 1	Year 2	Year 3	Total
Federal Grant Funds	$130,200	$177,664	$192,851	$500,715
CSD Contribution	131,230	150,280	17,443	298,953
Total Project costs	$261,430	$327,944	$210,294	$799,668

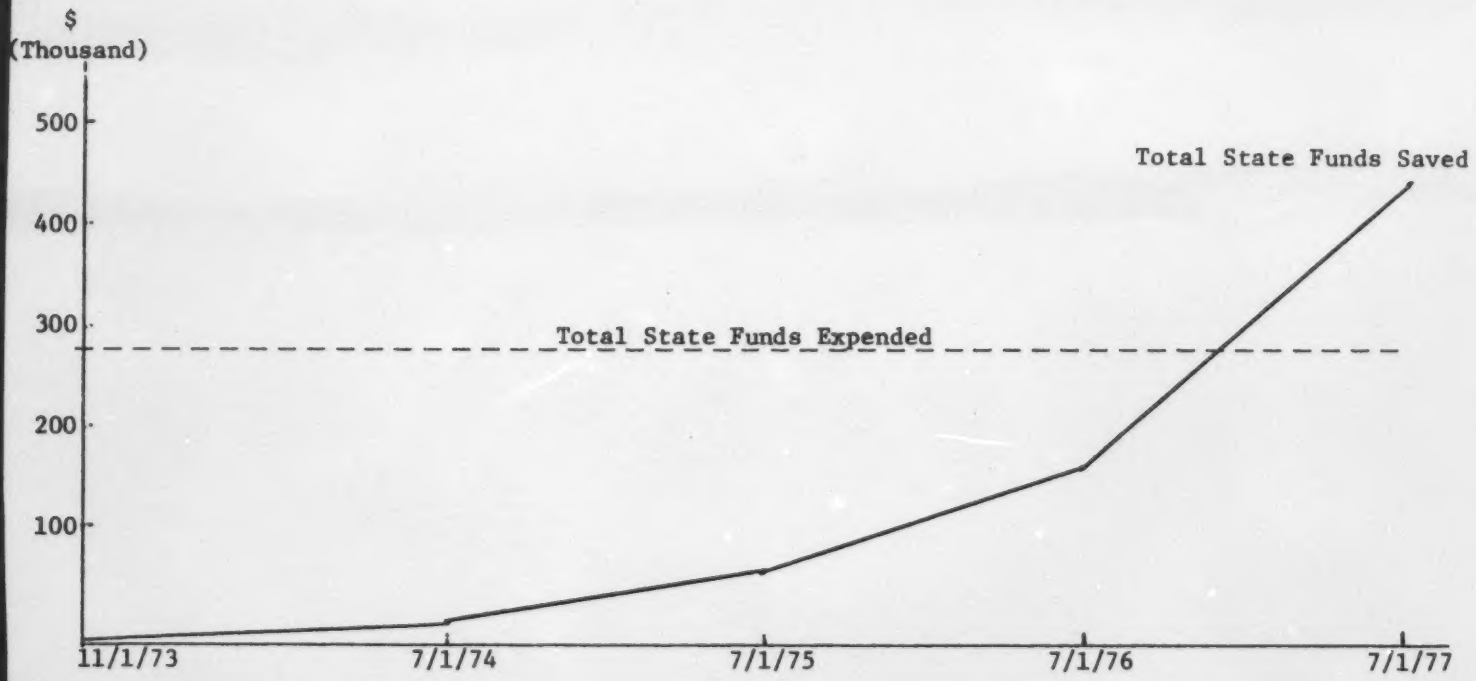

Figure 7.1 Permanent Planning Project: State Expenditures and Savings

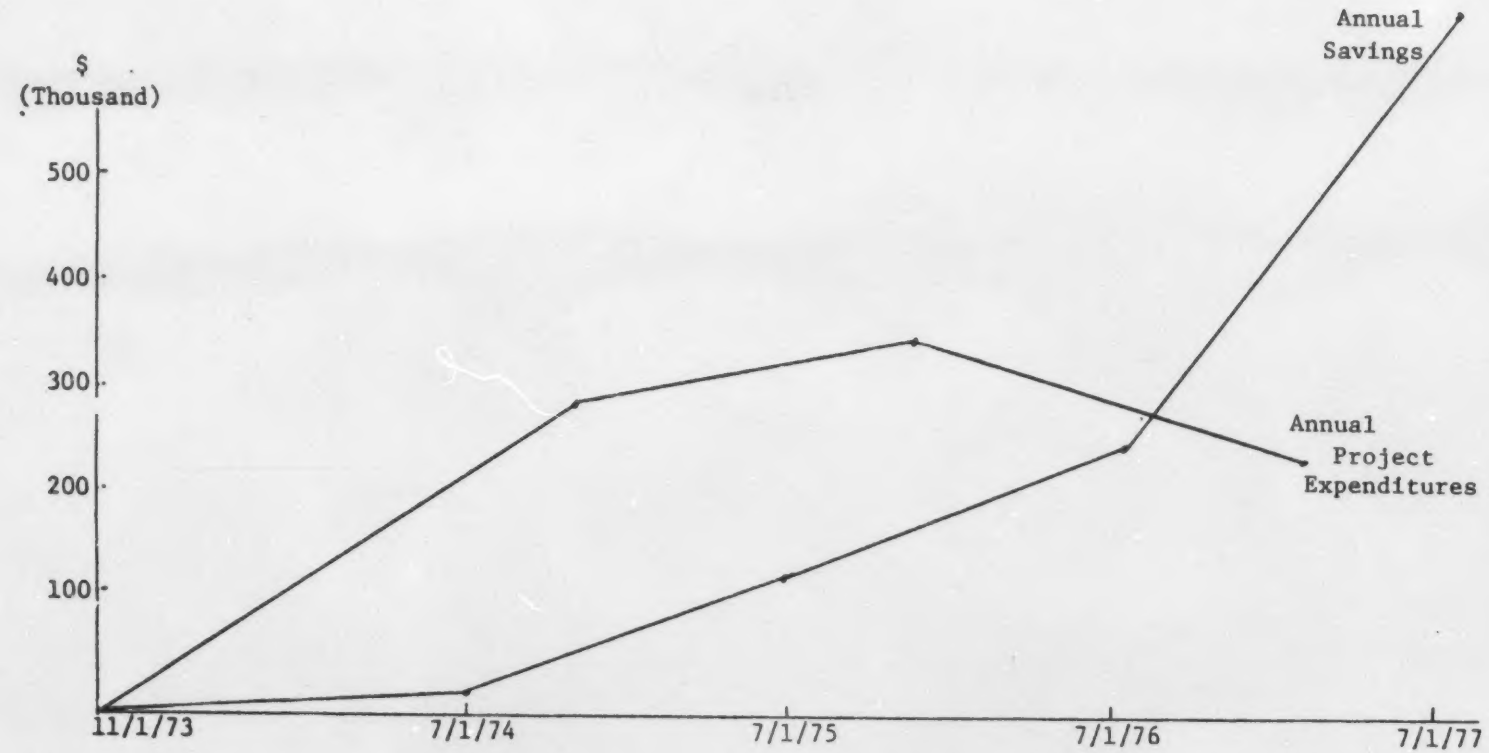

Figure 7.2 Permanent Planning Project: Annual Costs and Savings

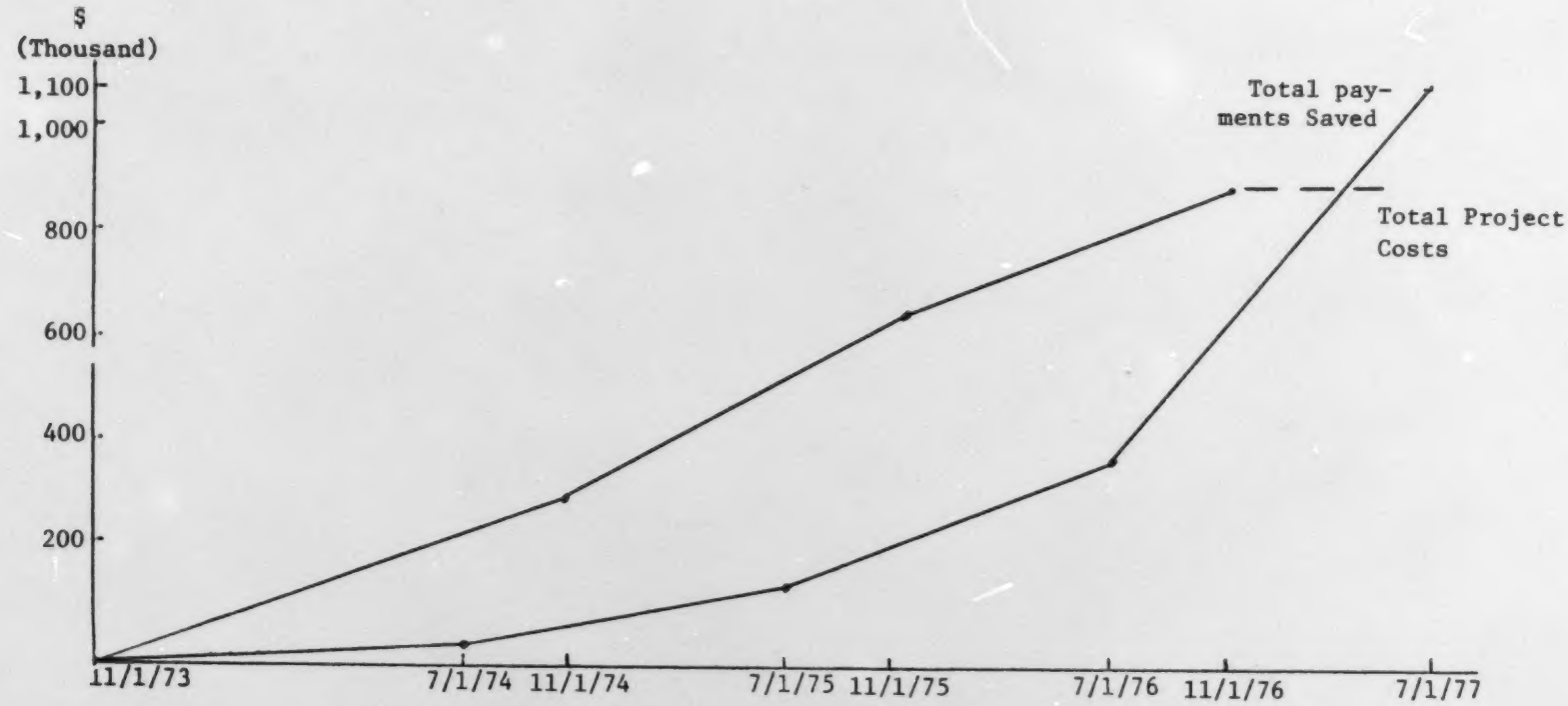

Figure 7.3 Permanent Planning Project: Cumulative Costs and Savings

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100A

COST ANALYSIS

The following material gives detailed information on sources of funds and expenses of the project, the cost of maintaining children in foster care, and a comparison of expenses of the two programs. Also included is specific information on how the estimates were made.

Project Costs: $799,668 for Three Years

Project costs were met by funds from the federal grant and from state CSD contributions. See Table 7.1.

Federal grant funds, $500,715. Included are salaries and benefits for project staff, travel, capital equipment, supplies, and contracted services (legal, research, medical). See Table 7.2.

State Contribution, $298,953. Two-thirds of the state contribution consisted of salaries and overhead for caseworkers. The caseworker segment was completed by the end of the second year, and consequently the state contribution to the project dropped drastically in the third year. CSD then began to implement permanent planning statewide, but the costs of such efforts that go beyond the demonstration project are not included. CSD also contributed central and local office administration and supplies and services. It is interesting to note that overall, the state portion of project costs was close to the normal state share of foster care program matching funds; state contributed costs were 37 percent of total expenses, while the state's share of foster care program funding is 41 percent. See Table 7.3 for a summary of CSD contributions.

- Caseworker salaries, $207,557, included the salaries of six caseworkers for two years. There were two workers in Multnomah County, and one each in Clackamas, Marion, Lane, and Jackson Counties. Four of the workers remained on the project for the entire two-year span (November 1, 1973-October 31, 1975), while one position each in Multnomah and Lane Counties was filled by two different workers during the project. See Table 7.4.

- Administrative Overhead, $63,476, included an estimate of central office administrative overhead (accounting services, statistical reporting, line administration, etc.), supervisory expenses in local offices, and expenses of two central office staff members who gave a significant amount of time to the project. See Table 7.5.

TABLE 7.2

Federal Grant Funds

Category	Year 1	Year 2	Year 3	Total
Personnel	$87,274	$91,779	$41,424	$220,476
Travel	6,655	8,086	7,907	22,648
Equipment (Capital outlay)	899	---	---	899
Supplies	489	173	2,500	3,162
Contract (including medical consultants)	34,882	77,626	141,020	253,528
Total	$130,200	$177,664	$192,851	$500,715

The project fiscal year ran from November 1 to October 31, while the state fiscal year runs from July 1 to June 30. To reconcile expenditure of the different fiscal years, the following procedure was adopted. Expenditures from the first two years of the project were taken from project records. To the extent that items for the second year had not been backcharged after the year ended, this method will understate expenses. Expenditures from the third year were taken from the itemized budget of 9-30-75. To the extent that actual expenditures differ from the budget forecast. this method will under or overstate expenses.

TABLE 7.3

CSD Contributions: Summary

Category	Year 1	Year 2	Year 3	Total
Caseworker Salaries[1]	$96,532	$111,025	---	$207,557
Central Office Admin. on Project[2]	8,727	9,178	$4,142	22,047
Local Office Admin. on Project[2]	5,051	5,113	---	10,164
Specialized Central Office Assistance[2]	8,962	10,984	11,409	31,265
Net Supply & Services Overhead on Project[3]	11,958	14,070	1,892	27,920
Total CSD Contribution	$131,230	$150,280	$17,443	$298,953

[1] See Table 7.4

[2] See Table 7 5

[3] See Table 7.6

Note: The Project had 11-1/2 full-time positions. The state contributed the salaries of 6; the others were funded by the project.

TABLE 7.4

CSD Contribution: Caseworker Salaries

County and time on Project	Salary and Benefits[1]	Administrative Overhead=10% of Salary[2]	Supply and Services Overhead[3]
PORTLAND:			
a) Nov. 1, 1973 Oct. 31, 1975	$24,275	$2,428	$4,502
b) Nov. 1, 1973 Oct. 31, 1974	11,179	1,118	2,099
c) Nov. 1, 1973 Oct. 31, 1975	11,671	1,167	2,402
LANE COUNTY			
a) Nov. 1, 1973 Aug. 31, 1974	10,590	1,059	1,739
b) Sept. 1, 1974 Oct. 31, 1975	14,813	1,481	2,763
JACKSON COUNTY			
a) Nov. 1, 1973 Oct. 31, 1975	27,195	2,719	4,502
MARION COUNTY			
a) Nov. 1, 1973 Oct. 31, 1975	23,284	2,328	4.402
CLACKAMAS COUNTY			
a) Nov. 1, 1973 Oct. 31, 1975	27,449	2,745	4.502
Total	$150,456	$15,045	$27,011

SUMMARY:

Salary and Benefits:	$150,456
Supplies and Services	27,011
Local Administration	15,045
Central Administration	15,045
Total	$207,557

[1] Salary and Benefits: Names and dates of service of the eight caseworkers were obtained from the Project Director. Their salaries and benefits were computed from payroll printouts. This figure included direct salary and

state contributions for retirement (if any), F.I.C.A., and medical plan. For the remaining months of 1973, amounts were taken directly from payroll printouts for November and December. For the remaining time on the project, salaries were computed as follows:

1) Information was gathered for June (end of one fiscal year) and July (start of the next fiscal year).
2) Yearly salary was computed by multiplying each figure by six months (January-June; July-December).

Given the time limit for developing data, this technique provides reasonably accurate figures. The procedure should average out both promotional raises (usually at the start of the calendar year) and general cost-of-living raises (at the start of the new fiscal year). If a specific raise was mentioned on the printout to take place in a following month, it was noted and the salary increase computed accordingly.

[2] Administrative Overhead: Overhead for administrative support of caseworkers was computed for both local and central offices. In both cases, the factor used was 10 percent of salary.

[3] Supply and Services Overhead: The supply and services overhead figures were developed from the budget figure of $2,450/year, and adjusted for earlier years.

TABLE 7.5

CSD Contribution: Administrative Overhead

Central Office Administrative overhead: (10 percent of project personnel costs)[1]	$22,047
Local Office Administrative overhead: (10 percent of project caseworker salaries)[2]	10,164
Central Office personnel providing a significant amount of time on the project[3]	31,265
Total Administrative Overhead	$63,476

[1] A factor of 10 percent of total salary expenses (salary + benefits) was used to estimate central office administrative overhead, for such items as accounting services, statistical reporting, line administration, etc. This is the percentage the state usually applies to externally funded grants.

[2] To account for supervisory expenses in local offices, an additional factor of 10 percent of caseworker salaries was made. This provides a reasonable estimate of actual supervisory cost, as there is normally one supervisor assigned to nine caseworkers (which suggests that the 10 percent factor is conservative).

[3] There were two people in the central office who spent more than 10 percent of their time on the project. Their costs were computed separately, by figuring total salary, plus administrative, supply, and services support, and then applying an appropriate percentage to reflect their time on the project.

- Supply and Services Overhead, $27,920, would ordinarily include office space and utilities, telephone, training expenses, office supplies and travel. However, in this case the project also contributed to some of these costs. To compute S & S expenses incurred by CSD, therefore, an estimate was made based on figures normally used in the state accounting office, and the estimate was then modified to reflect project contributions. See Table 7.6.

- Project Medical Costs for project children are not included in this analysis. Medical expenses for both project and regular foster care children are paid by Public Welfare from Title XIX funds of the Social Security Act. There is no record in the CSD accounting systems of such costs, and there was not enough time to gather the information from a sampling of case records.

  Project funds were available for psychological examinations of parents, and the public defender budget included funds for expert witness testimony.

Cost of Maintaining a Child in Foster Care

To discover savings made possible by the project, an estimate was made of what it would have cost for the children to remain in regular foster care.

- Maintenance, or direct "out-of-pocket" costs of family foster care are fairly straight forward. They range from $107 to $152 per child per month. Reimbursement rates are set according to age of the child. In addition, there are often one-time payments, for school, clothing (when a child first enters a foster home), and other miscellaneous expenses. Also, if a child falls within one of the special rate categories (physical handicap, emotionally disturbed, mentally retarded, delinquent), an additional amount may be allocated. The one-time and special payments are determined on an individual case basis, and comparisons with project cases could not be done with sufficient accuracy to be valid.

- The services costs for maintaining a child in foster care had to be estimated, and here the only estimate possible was very rough. Because the accuracy of this estimate was so tenuous, only the cost of direct payments to keep a child in foster care was used in computing the savings made possible by the project. This procedure may underestimate the actual savings. Table 7.7 summarizes Maintenance and Services Costs.

TABLE 7.6

CSD Contribution: Supply and Services Overhead

6 caseworkers at 2 years (Nov. 73-Oct. 75):		$20,451
1 caseworker at 1/2 year (Nov. 75-April 76):		927
1 secretary at 3 years (Nov. 73-Oct. 76):		4,368
1 project director at 3 years (Nov. 73-Oct. 76):		5,263
		$31,009
less supplies and phone paid by project funds:		
a) paid (Nov. 73-Oct. 75):	$1,189	
b) third year budget:	1,900	
		3,089
Net CSD Contribution:		$27,920

Caseworkers:

- The state accounting office figure of $2,450, covering S & S overhead for one caseworker, was used for fiscal 1975-76.
- It was adjusted for earlier years by using a factor equal to the ratio of earlier salary to 1975 salary for a representative caseworker. This procedure provided a rough correction factor for the effects of inflation. The result was an S & S overhead estimate of $2,164 a year for July 1-December 31, 1974, and $2,066 a year for November, 1973-June, 1974.
- The figures were then adjusted further to remove the travel portion, which was paid from project funds.
- The project covered part of the cost of caseworker supplies and telephone. It contributed $1,190 during the first two years. To this figure was added the third year project budget figure of $1,900. This total was then substracted from the previous estimate to arrive at a net figure of CSD expenses for S & S.

Secretary:

- Overhead was computed by deducting both travel and training from the budget figures, and adjusting for earlier years in the same manner as the caseworker overhead. The total was then multiplied by a factor of .83, which is the ratio of office space allocated for a caseworker.

TABLE 7.7

Maintaining a Child in Foster Care: "Average" Case

Maintenance Costs: On Monthly Basis

	Age 0-5	6-13	14+
Maintenance:			
1975-76 FY	$107	$124	$168
1976-77 FY	115	135	182
Medical: (PWD Budget)	18	18	18

Special Rates: Determined on an individual basis. Only if children in the project are on special rates, is this category needed.

One-Time Payment: Overall figures are available for one-time payments for clothing, school expenses, etc. However, without corresponding data on number of new cases, an average figure cannot be computed.

Delivery Costs:[1]

Caseworker: at $973/mo. + benefits		$13,536
Administrative Overhead: (10% of salary	Local	1,353
	Central	1,353
Supply & Services Overhead		2,450
Total Annual Costs:		$18,692

Assuming a caseload of 34 children (Professional association recommendation)

Cost per child per year:	$550
Cost per child per month:	46

Assuming a caseload of 50 children (legislative staffing guidelines)

Cost per child per year:	374
Cost per child per month:	31

[1]Delivery costs of an "average" case in the system were computed by taking the salary level of a Social Worker 2, base salary, and adding local and central office administrative and supply and service overhead. We assumed maximum caseloads of 34 (specialized caseload, standard recommended by professional associations) and 50 (legislative staffing appropriation guidelines).

Estimate of Savings

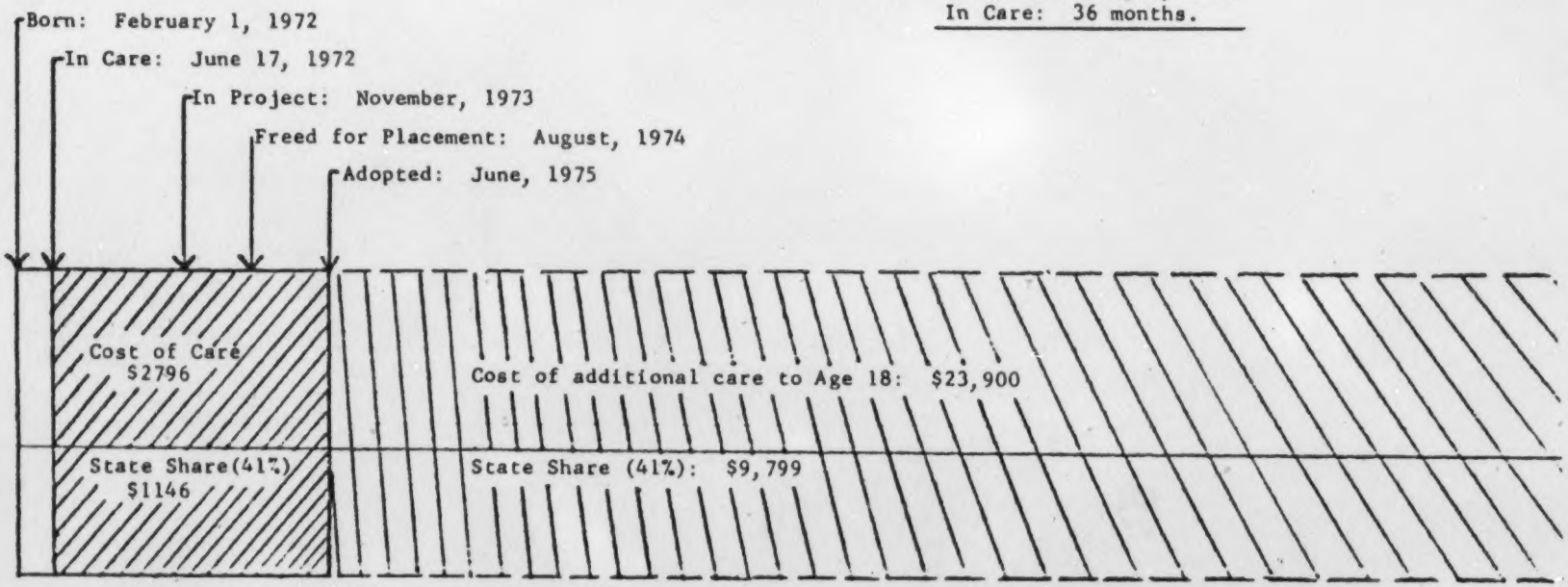
- Assuming child remains in care until age 18. Five cases were selected at random for illustration of possible savings. Notice that to extend care to age 18 would be expensive in maintenance costs alone (this is the technique utilized by Fanshel and Shinn in their 1972 study). A life-table analysis would provide a more accurate estimate of the return rate and time in care, but this information was not available. If medical, special payments, and delivery costs were also projected, they would inflate the figures considerably. Graphs "A", "B", "C", and "J", and "L" show savings using this measure.

- Using Months of Care (MOC) Measure. The MOC measure estimated foster care savings, assuming the child would have remained in care from 12 to 23 months longer if he had not received project services. A return rate to foster care of 20 percent was assumed in making this estimate. Total foster care payments saved during the course of the project was over $1,000,000, of which the state contribution (41 percent) would have been nearly $444,000. Table 7.8 summarizes the savings made possible by the project.

There are at least two qualifications relevant to the savings estimates. First, we do not know how much of the savings results from clearing out a "backlog" of cases requiring a permanent plan. To the extent this occurred, the savings would be higher in the first few years of the program. On the other hand, there were non-recurring start-up costs to develop techniques and procedures for achieving permanent plans for children. The costs of a pilot project may be higher than those of an ongoing program. Finally, there are benefits to society of developing methods to ensure stability and permanence for children, especially methods that can be adopted by other states. Monetary values of such benefits are difficult to identify and allocate, but are undoubtedly substantial.

GRAPH "A"

"A"- Male
Born: February 1, 1972
In Care: 36 months.


Born: February 1, 1972
In Care: June 17, 1972
In Project: November, 1973
Freed for Placement: August, 1974
Adopted: June, 1975
Cost of Care $2796
Cost of additional care to Age 18: $23,900
State Share(41%) $1146
State Share (41%): $9,799

Cost of Care= Maintenance Rate only
Costs after June 30, 1977 computed at the 1976-77 FY rate.

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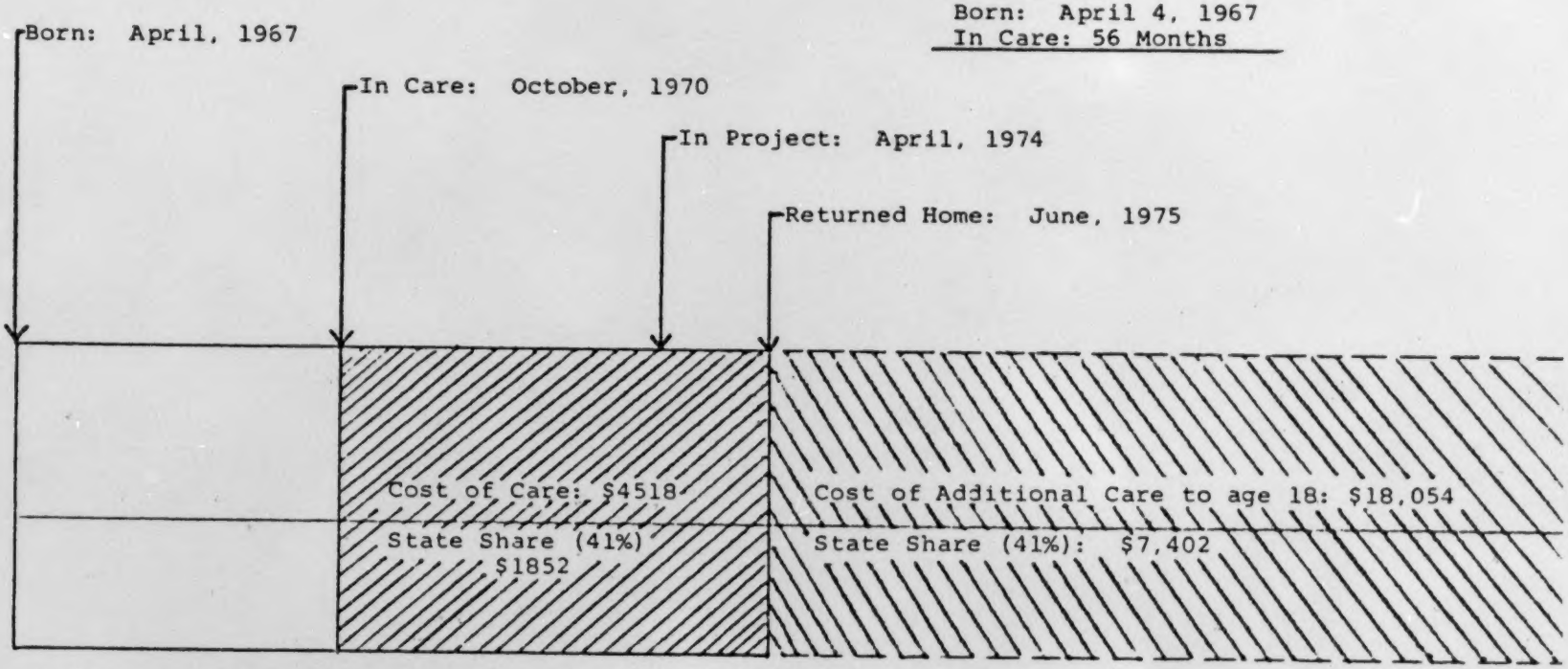
GRAPH "B"

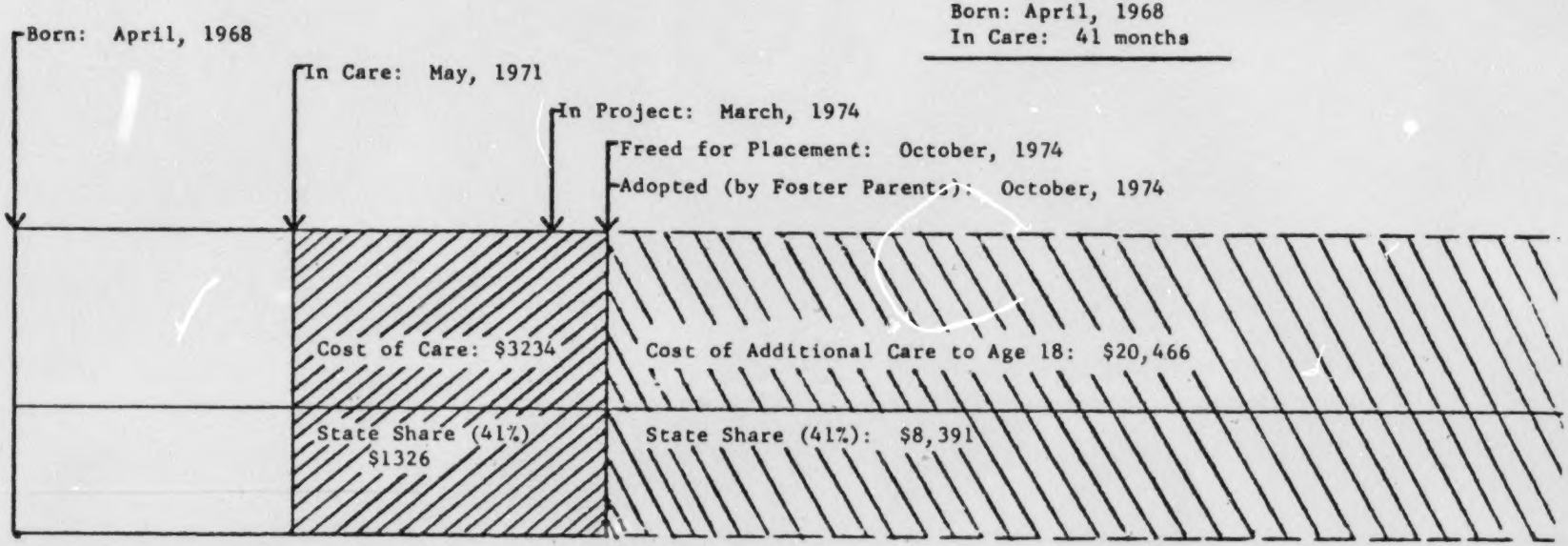
"B"- Female
Born: April 4, 1967
In Care: 56 Months


Born: April, 1967
In Care: October, 1970
In Project: April, 1974
Returned Home: June, 1975
Cost of Care: $4518
State Share (41%) $1852
Cost of Additional Care to age 18: $18,054
State Share (41%): $7,402

Cost of Care=Maintenance Rate only
Costs after June 30, 1977 computed at the 1976-77 FY rate.

GRAPH "C"

"C"- Female
Born: April, 1968
In Care: 41 months


Born: April, 1968
In Care: May, 1971
In Project: March, 1974
Freed for Placement: October, 1974
Adopted (by Foster Parents): October, 1974
Cost of Care: $3234
Cost of Additional Care to Age 18: $20,466
State Share (41%) $1326
State Share (41%): $8,391

Cost of Care= Maintenance Rate only
Costs after June 30, 1977 computed at the 1976-77 FY rate.

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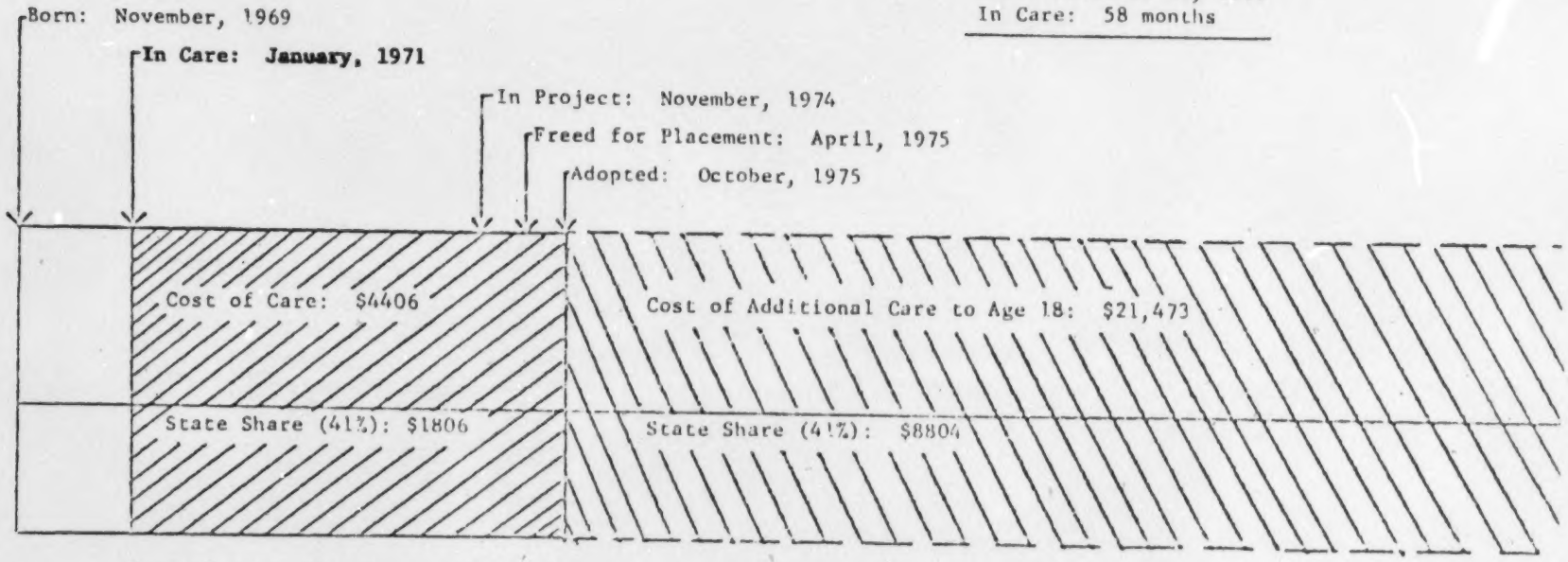
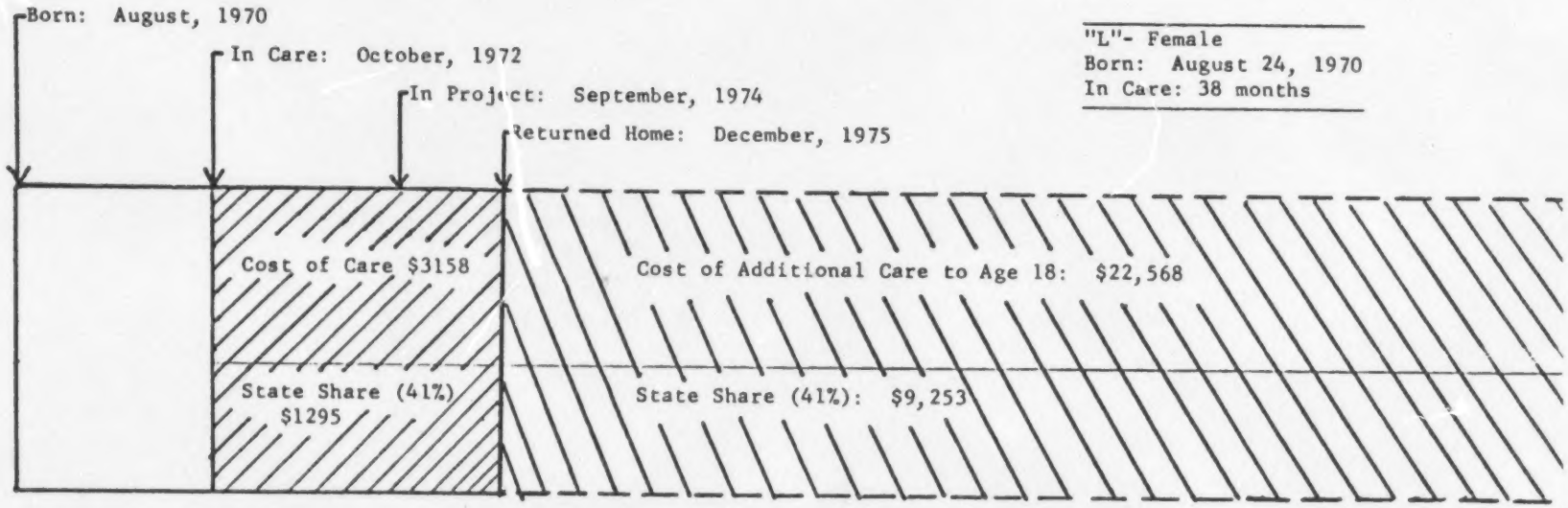
GRAPH "J"

"J"- Male
Born: November 16, 1969
In Care: 58 months


Born: November, 1969
In Care: January, 1971
In Project: November, 1974
Freed for Placement: April, 1975
Adopted: October, 1975
Cost of Care: $4406
State Share (41%): $1806
Cost of Additional Care to Age 18: $21,473
State Share (41%): $8804

Cost of Care= Maintenance Rate Only
Costs after June 30, 1977 computed at the 1976-77 FY rate.

GRAPH "L"



Cost of Care= Maintenance Rate only
Costs after June 30, 1977 computed at the 1976-77 FY rate.

TABLE 7.8

ESTIMATE OF SAVINGS

Fiscal Year	0-5 M.O.C.[1]	0-5 Amount[2]	6-13 M.O.C.	6-13 Amount	14-21 M.O.C.	14-21 Amount	Total Payments[3] Saved	State Contribution (41% Saved)
1973-74	59	$ 4,425	97	$ 9,021	3	$ 275	$ 13,821	$ 5,666
1974-75	495	43,560	664	68,392	52	7,228	119,180	48,864
1975-76	962	103,934	1,309	162,316	73	12,264	277,514	113,781
1976-77	1,704	195,960	3,204	432,540	240	43,680	672,180	275,594
Total		$346,879		$672,269		$63,547	$1,082,695	$443,905

[1]The measure used to estimate savings was the "months-of-care" (M.O.C.) saved by the project - the number of months a child would have remained in foster care if adoption or a return home had not occurred. To construct the M.O.C. measure we took the computer listings in the "returned home" and "adopted" categories. We tabulated the number of children in each age group, and the month payments were stopped. This procedure gave a distribution of the number of children returned home or adopted for each reimbursement category (age). The M.O.C. saved was computed by multiplying the number removed from foster care in a month, times the number of months remaining in the fiscal year. For example, if a child returned home in February, 1974, there would be five months remaining in the fiscal year. If five children were removed from care in that month, the M.O.C. saved would be 25 for that fiscal year. Some children go back into foster care after returning home. To account for returns to foster care, a factor of 20 percent was applied at the end of each fiscal year. This factor probably overstates the number of returns to foster care. Information obtained from the fourth year tracking portion of the project should provide a more accurate factor. Adoption failure is less than 1 percent and was not considered in this estimate. The remaining 80 percent of the children who returned home were assumed to remain in their own home. The cost of keeping them in foster care was computed for an additional 12 months, as it was assumed that they would have remained in foster care that long if a permanent plan had not been made. For example, from a total of 20 children returned home in fiscal 1974-75, the foster care costs of 16 children (80 percent) would be carried over to the following year. For each age category, the applicable maintenance rate was multiplied by the M.O.C. figures to estimate savings in a particular fiscal year. For fiscal year 1975-76, the data ended in January, 1976. For fiscal year 1976-77, it was assumed the plan listed would be completed by the beginning of the fiscal year, so these children were distributed by age category and the total number multiplied by 12 months. As the caseworker portion of the project was completed October 31, 1975, the eight month interval to the end of the fiscal year should allow for resolution of the remaining cases

[2]Based on the maintenance payment rates in effect during the period.

[3]Based on direct maintenance rates only. A return rate of 20 percent of children who returned to parents was assumed at the end of each year. In addition, medical expenses budgeted through the Public Welfare Department would be reduced by approximately $42,800 in FY 75-76, and by $94,000 in Fy 76-77.

CHAPTER 8

IMPLEMENTING PERMANENT PLANNING STATEWIDE

As a state agency embarks upon a demonstration project in order to learn how to improve its program, the forces for change are broader than the project itself. Yet one purpose of a demonstration is to encapsulate change within the confines of a project so the results can be examined more clearly and reviewed for their implications for new policy, before implementing changes in the wider state system. From conception to implementation, the fate of a demonstration project probably depends, far more than anyone cares to admit, on historical antecedents, on the administrative environment, on the climate of ideas, and on other external forces. This chapter highlights some of the events that shaped the development, acceptance, and implementation of permanency planning in Oregon. Also described are some of the tough issues encountered in the process.

Prior Work and Factors Other Than the Project

It is important not to attribute to the project all the events that came to be associated with it. The project was one manifestation of interest and effort in permanent planning. People who later were involved in the project, as well as other CSD staff and people outside the agency, laid the groundwork and supported the venture.

- An important early step in making possible permanent placements for foster children is statutory authority for termination of parental rights. A statute gives leverage and authorization for permanent planning, whether termination of parental rights or some other option is finally exercised in behalf of the child. As described in Chapter 6, work on the Oregon statute preceded the project. The legislature passed a statute in 1958, and revised it in 1973, just four months before the project officially began. The project director, among others, was instrumental in the statute revision, having written most of it himself.

- Victor Pike, who became project director, worked to resolve cases heading for termination of parental rights while acting as a supervisor at CSD; his experience benefitted Multnomah County CSD (which includes Portland) and the court. At the invitation of other counties, Pike conducted informal workshops about what he was learning in this field.

- Betsy Preston Welch, a lawyer, vigorously developed an unprecedented number of termination cases while she was with the District Attorney's Office in Multnomah County.

- Foster care figure Mary Reistroffer, at the invitation of the CSD administration, conducted workshops which stimulated caseworker concern about decisive action for children entering foster care.

- Juvenile Court Judge, the Honorable Jean Lewis, through her association with the National Council of Juvenile Court Judges, made Multnomah County one jurisdiction in a national study of "Children in Placement," which aimed at improving court review procedures.

A Demonstration Project Within a State Agency: Development of Administrative Relationships

The project "Freeing Children for Permanent Placement" resulted from a demonstration proposal to the Children's Bureau, Office of Child Development. Though written with some assistance from Cecil Hinsey, a researcher in the state office, the proposal was largely the work of Victor Pike. The demonstration proposal was approved on condition that an outside evaluation research component would be added to the project. Arthur Emlen was named the third-party researcher, and thus the grant came to include a contract with the Regional Research Institute at Portland State University, which Emlen heads, for the evaluation.

At the time the project proposal was written, state CSD did not perceive it as a primary component in the agency's efforts to improve its foster care system. It was seen primarily as a termination project leading to adoption. Partly for this reason, the project was first niched with the state Adoption Program. This placement was unsatisfactory for a number of reasons. Children's Bureau project officer Cecilia Sudia was concerned that the demonstration project was encapsulated at too low an administrative level, within only one of the state programs it affected. Though making a special contribution to freeing children for adoption, the demonstration was developing plans other than adoption. Protective service units and the foster care program also had a stake in the project. From a research perspective, Emlen objected to the potential source of bias in having permanent planning related solely to termination of parental rights and adoption.

For its part, CSD recognized that the project created implications for policy that would need to be considered more widely within the agency. The project was directed by a person strongly oriented towards practice and the line level worker. At Vic Pike's request, project headquarters were located in Portland, not in the state office in Salem. A zealous project director and an active staff created problems for central office, and the project did not enjoy wholehearted administrative support during the first year.

Thus, after the project was one year down the road, the responsibility for overseeing the project was assigned to Lois McCarthy, experienced manager in the Family Services Section. The Adoption Unit was part of this Section. By the third year, a Steering Committee had been formed of heads of the foster care and adoption programs, the project director, the Public Defender, research persons in the state office, and representatives of the Regional Research Institute. The Steering Committee reviewed and synthesized the results of the project, considered issues as they arose, and assessed what policies might be developed as a result of the project. The Steering Committee focused sharply on how features of the demonstration might be implemented in the statewide system. In time, it was instrumental in preparing the data that the administration needed in making important presentations to the legislature. The Governor's Executive Department maintained an interest and was instrumental in obtaining legislative approval for on-going staff at the end of the project.

Statewide Implementation: First Steps

The Steering Committee, the involvement of an outside research group, frequent site visits by OCD project officer, Cecilia Sudia, all seemed to increase CSD's awareness of the demonstration's significance. The project might well attract interest from other parts of the nation. Concern over what would happen when the demonstration was completed evolved into determination to implement the project's techniques in all Oregon counties. Three kinds of activity were undertaken: dissemination of materials about the project throughout the state, plans to train caseworkers and supervisors with state training monies, and a budget request to the legislature to build the key project positions into the base budget of the Children's Services Division.

Dissemination. A number of activities occurred during the course of the project to bring it to the attention of CSD staff: the initial screening of foster care caseloads, the study of caseworker

attitudes in project and non-project counties, information about an increasing number of court cases, wide-spread immediate feedback on the results of the research, and the policy recommendations. Material on these topics, developed by the project and the research group, was distributed widely. Particularly dramatic for the counties were findings of county-by-county differences in resolving barriers to planning for children.

Training. At first, discussions of training as a way of implementing the results of the project were limited to proposal efforts to obtain additional funding, such as Title XX. The state foster care advisory committee became involved in the process with the Regional Research Institute and CSD staff. After a series of meetings, however, CSD decided that a permanent planning approach was so fundamental and essential that the state itself should assume the training responsibility with its own funds. This was encouraging evidence of CSD's move toward institutionalizing the concepts and practices of the project.

Victor Pike, in conjunction with regional training staff, conducted one-day workshops on permanent planning techniques in each Oregon region. Assisted by former caseworkers on the project, he met with caseworkers and supervisors in county offices who would be carrying on procedures developed by the project.

The Handbook for Social Workers discussed in Chapter 4 was developed during the third year of the project and became an important instrument for training.

State Coordinator. In the Spring of 1976, a carefully prepared request was made to the legislature to add a coordinator of permanent planning to the Children's Services Division base budget. Included in this request were three positions: the coordinator, an assistant, and a secretary. They would consult with and supervise the permanent planning activities of regular CSD caseworkers, who took over the caseloads of the special project workers during the third year of the project, as the demonstration was phased out. The budget request was able to report the high percentage of children returned home and freed for adoption. The results of the cost analysis in Chapter 7 showed that the start-up costs of the project had been overtaken by savings in foster care by the end of the third year. These impressive results caused the legislature to approve the request, and the demonstration project became part of Children's Services regular program.

Screening and Information for Case Management. There are, of course, other respects in which the work of implementing the demonstration remains uncompleted. Procedures for case screening and effective use of such decision-making tools are still in the beginning stages. As in most states, Oregon's information system for case management is still not an integrated part of professional behavior for many caseworkers.

Advisory Group. From the beginning, the project officer, Cecilia Sudia, diplomatically advocated the formulation of a citizen's group to act as advisors and knowledgeable supporters of project activities, which were often controversial and subject to misinterpretation. Caught up in the pressures of management and apprehensive of the effort involved in the care and feeding of an advisory committee, the project director procrastinated and one was never formed. In retrospect, he admits that the lack of an informed group of citizens had consequences for the project throughout its entire life. Possibilities for beneficial uses of such a group may be evident from the following discussion of policy issues.

Sticky Wickets and Unresolved Policy Questions

During the course of the project there have been several controversial issues, areas of conflict, and unfinished business that remain to be resolved. Their resolution becomes more urgent as permanent planning methods are adopted by an entire state agency.

- The relationship of termination of parental rights to a balanced permanent planning program. Termination of parental rights is a radical surgical procedure in which due process is critical. Its validity depends on the existence of a balanced set of options, which include return of the child home as well as other permanent placements. A recurring question with which the project had to deal was whether it was avoiding bias toward termination of parental rights. The evaluation found that although the project might consider termination of parental rights as a possible course of action in a given case, such consideration by no means determined that termination would be the course of action finally chosen. In fact, systematically gathering evidence for a termination of parental rights which frequently included establishing that a parent could not care for his child, was precisely the activity that often discovered previously unidentified potential in parents. Significant

numbers of children returned home despite the fact that their parents were initially labeled as being unlikely to provide a home. The consideration of termination was used as an instrument of decisiveness, and did not dictate a particular role.

Nevertheless, public interpretation of goals and methods of permanent planning is the Achilles heel of such a program. It is vulnerable to negative publicity, as headlines tell the side of special interests. Relatives, for example, sometimes make claims as adoptive parents in dispute of agency plans. Legislators may intervene in behalf of constituents in the permanent planning process. Because emotions run high, these cases are occasionally publicized by the press and sometimes distorted, creating problems for state agencies. There is the risk that permanent planning will be portrayed by others as a heavy institutional program to sever children from their families, rather than as a carefully prepared means of protecting a child whose particular circumstances require it.

- Relationship of Permanent Planning to State Adoption Programs. The project considered termination of parental rights as an option for a child only if a suitable adoptive home could be found for him. If termination is not followed by adoption, the state becomes the parent of the child, the ultimate identity limbo. Thus, age, race, physical and emotional handicaps could preclude adoption as a possible plan for a child, and a lack of subsidy was a barrier to adoption for some. Further, an active permanent planning project greatly increases the demand for adoption services. Without staff and vigorous effort to place children with special needs, a bottleneck can develop. Recognition of this in Oregon coincided with a move already underway to increase adoption services.

- Characteristics of Clients Served by a Child Welfare Agency. State public welfare agencies tend to serve the poor and disadvantaged, including minority groups and persons who wield little political influence as individuals. There is apt to be a certain appearance of oppressive service, and due-process issues become especially important. Particularly with respect to termination of parental rights, the relationship between parental rights and interests and child's rights and interests remains troublesome. When has service to a parent been sufficient, and what minimum level of parental adequacy should be accepted? With regard to minority groups in particular, should an Indian child be adopted by non-Indian foster parents to whom attachments have developed? Should recruitment of minority race adoptive homes be required?

- The problem of right to counsel and who pays for it. An early case in the project (in re. Wade) held that the district attorney represents so many interests that the child needs independent representation. Indeed this decision accorded with the position taken by the project itself in contracting for legal representation of the child. How this should be done on a statewide basis, and whether as a legal right, are matters of substantial fiscal significance, as well as of debate concerning statutory and possibly constitutional authority. Thus, given the recognized standing of such legal representation of the child, what programs are necessary to assure that the lawyers are well-informed concerning the child welfare issues and the court procedures involved? The description of the legal program in the Oregon project (Chapter 6), examines some of these problems.

- The problem of the irreversibility of due process lost. One of the most difficult issues to be faced in achieving permanent placements for children in long-term foster care is the discovery that perhaps a child need not have been placed in foster care to begin with, or that foster care went on longer than was necessary, or that the agency's lack of diligence caused it to lose contact with the parents. But if there was a lack of due process or inadequate service to the family in the past, then which is the best plan now, when the child has become attached to his foster parents? Is the situation beyond remedy? Will a last-ditch due-process effort in behalf of the parents result in harmful disruption of the child and painful severing of acquired relationships? Not enough is known about emotional bonds, or about how to assess their strength and the effects of severing them. Procedurally, the project was aided by legal representation of the child, which helped to focus court decisions on current benefit to the child despite past mistakes which now could not be easily remedied or reversed. Further refinement is needed in establishing criteria and standards for removal of a child from his home, for return of a child to his parents, for the decision that a child should be adopted by his foster parents or by other parents, and for knowing when to give precedence to relatives or friends of the family.

In this volume we have tried to identify the essential ingredients of the "permanent planning" that was done for 509 children in foster care who were identified as unlikely to return home. Keep in mind that primarily the Oregon project addressed a "younger backlog" of

children who were already in foster care and risked remaining there, yet who were under 12 years of age. The demonstration leaves much to learn about permanent planning for the older "backlog" of foster children or for the potential and early entrant into foster care.

Furthermore, the demonstration was a strike-force attack on this backlog by a special unit that was added to the regular system of service delivery. A third volume on the Oregon project will assess (and compare) the contributions of the demonstration and of changes occurring simultaneously in the state agency.

POSTSCRIPT

During the summer of 1976, the Oregon Project became part of a national effort to reduce the number of children in unplanned foster care. The Children's Bureau, through its National Center for Child Advocacy, awarded grants to several states to replicate features of the Oregon Project and contracted with the Regional Research Institute for Human Services at Portland State University to provide states with technical assistance over a period of four years. Fifteen states are now engaged in special projects to overcome the barriers to permanency for their foster children, and 10 additional states will participate during the second year.

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*U.S. GOVERNMENT PRINTING OFFICE : 1978 O-720-340/8363